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Supreme Court of the United States

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., ET AL., APPELLANTS,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED NOVEMBER 15, 1949.

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[fol. a]

IN CIRCUIT COURT FOR THE COUNTY OF WAYNE, STATE OF MICHIGAN

CALENDAR ENTRIES

1948

May 17. Bill of Complaint filed, summons issued.

May 17. Order to Show Cause and Temporary Restraining Order signed, filed.

May 20. Appearance filed in pro per.

May 20. Motion to Dismiss filed.

May 21. Intervention and Appearance of Attorney General filed.

May 22. Findings and Opinion of the Court signed, filed.

May 27. Order Denying Motion to Dismiss and Granting Temporary Injunction, signed, filed.

May 29. Amended and Supplemental Bill of Complaint filed.

June 29. Motion to Modify Injunction and Notice filed.

July 2. Answer of Attorney General filed.

July 2. Answer of James N. McNally filed.

July 6. Praecipe for Causes Ready for Trial filed, No. 77202.

July 6. Order Granting Motion to Advance signed, filed.

July 6. Stipulation to Advance filed.

July 15. Parties present, hearing in progress, cause adjourned to July 19, 1948, at 10 A. M., court sheet, Judge Richter, $6,000.

July 19. Parties present, hearing concluded, cause taken under advisement, court sheet, Judge Richter.

July 19. Motion and Order to File Supplemental Bill, signed, filed.

July 19. Supplemental Bill filed.

[fol. b] July 19. Order allowing filing of Supplemental Bill of Complaint, filed.

July 28. Memorandum Brief in behalf of E. F. Black filed.

July 29. Brief for Defendant filed.

Aug. 3. Brief for Defendant filed.

Aug. 3. Opinion of the Court signed, filed.

Aug. 5. Answer to Supplemental Bill filed.

Aug. 11. Degree signed, filed, entered, Judge Theodore J. Richter.

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Aug. 11. Claim of Appeal ($5 pd.) and Proof of Service filed.

Aug. 12. Notice of Entry of Decree and Proof of Service filed.

Aug. 23. Claim of Appeal ($5 pd.) filed.

Aug. 23. Certificate of Court Reporter filed.

Aug. 24. Answer to Second Supplemental Bill filed.

Aug. 24. Notice of filing Claim of Appeal, etc., and Proo. of Service thereof, filed.

Aug. 25. Affidavit, Motion for Extension of Time, Notice, Proof of Service, filed.

Aug. 31. Stipulation and Order Extending Time, signed, filed.

Sept. 2. Settled Case on Appeal, signed and filed, court sheet, Judge Richter.

Sept. 2. Notice of Presentment and Settlement of Settled Case on Appeal and Proof of Service filed.

Sept. 3. Notice of Transmission of Record on Appeal to the Supreme Court filed.

[fol. 1] IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE IN CHANCERY

Honorable Theodore J. Richter, Circuit Judge

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., Emil Mazey, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell, and Blaine Marrin, Plaintiffs and Appellees,

vs.

JAMES N. McNALLY, Wayne County Prosecuting Attorney, and Eugene F. Black, Attorney General of the State of Michigan, Defendants and Appellants

Transcript of Trial Proceedings

The above entitled cause came on for trial before Hon. Theodore J. Richter, Wayne Circuit Judge, without a jury

[fol. 2] on the 15th day of July, 1948, the plaintiffs being represented by Nicholas J. Rothe, of the law firm of Rothe & Zwerdling, and by Harold Goodman, of counsel. The defendant James N. McNally, Wayne County Prosecuting Attorney, appeared in propria persona and by J. Lynn Fewlass, Assistant Prosecuting Attorney, and the defendant Eugene F. Black, Attorney General of the State of Michigan, was represented by Ben H. Cole, Assistant Attorney General, whereupon the following proceedings were had.

To maintain the issue for plaintiffs, the following witnesses were sworn and testified in their behalf:

EMIL MAZEY, being first duly sworn, testified as follows.

Direct Examination.

By Mr. Goodman:

My name is Emil Mazey. I reside in the City of Detroit. I am an officer in the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O.; am Secretary Treasurer of that union, which is generally known as the U.A.W. C.I.O. It is a union, a trade union, association of workers to improve their wages and working conditions and other conditions of employment. As to the trades in which the members work, we have jurisdiction over the auto industry, aircraft, agricultural implements. People in this particular case build automobiles.

We have approximately 550,000 dues paying members in Michigan, and approximately 250,000 members in Wayne County.

The interest of our union in this particular suit is that we feel that the Bonine-Tripp Act limits our constitutional [fol. 3] rights to strike. The act makes it mandatory for the state to conduct elections, and for us to obtain the opinions of people who are not members of our union, before it is possible to strike. The provisions of the act state that a majority of the people in the bargaining unit must vote in favor of strike action before it is possible to strike, and not a majority of those participating in the election, and it is possible under the provisions of the act to have non-members of the union to make a decision that affects the actions of members of our organization, because non-members have a right to vote. We feel that in a strike action the members of our union should have the right to make de-

cisions themselves. We feel that this act denies our right to strike and limits our right to strike, and therefore we are opposed to it.

Our union is controlled by our membership. We elect officers and executive board members at periodic conventions, and the International executive board of our union, which represents our membership, have gone on record unanimously in opposition to this act, for the reasons which I have stated; and our officers and our board members represent the wishes of our membership.

Mr. Cole: I will ask, may it please the court, that that answer be stricken for the reason that if there has been any such action as testified to by the witness, it is a matter of record, and I demand the production of the books and records, and ask his answer be stricken as hearsay.

Mr. Goodman: Well, your Honor, this is in the nature of a class suit. It is brought by Emil Mazey in behalf of the membership of the union, and it is brought by the union members in association. I think he has a right to express [fol. 4] the solidarity of the union membership in regard to the subject of the bill of complaint, if he knows.

The Court: It may stand.

I would like to state that in this particular case we recommended to——

The International Executive Board recommended to our—the Chrysler membership, not to participate in a Bonine-Tripp election if it were held and to take strike action under the provisions of our constitution, and they did. The very fact that they took strike action without having a vote conducted by Bonine-Tripp is the best evidence our membership is opposed to the act and feels the same way about it as we do.

The matter of the right to strike has been a subject of discussion among the membership in my presence.

We have discussed the question of the right to strike with our membership on numerous occasions, we have discussed it during the preparations for collective bargaining and with our membership, the Chrysler situation, General Motors, Briggs, a number of others, and we have pointed out to our membership, and have discussed——

In our meetings with our membership, and leadership of our unions, we reached the conclusion that the Bonine-Tripp Act is unconstitutional.

The Court: Well, that is a conclusion of law.

Mr. Fewlass: May it please the court, if this line of testimony is for the purpose

The Court: That is a legal conclusion.

Q. Mr. Mazey, will you speak concerning your authority as derived from the membership in this matter?

Mr. Cole: I will object to that for the reason that if there is any such authority, it is a matter of record in the consti-[fol. 5] tution and by-laws of the union. We demand the record.

Mr. Goodman: That isn't what I am referring to. There may be authority in the matter of by-laws, but I am referring to specific authority to prosecute this particular action in behalf of members.

The Court. You may answer the question.

Mr. Fewlass: May I make a statement on the record, may it please the court? If this is going to the question of Mr. Mazey's authority to sign this bill of complaint on behalf of the union members, his authority of necessity must be in writing, because an agency for the purpose of committing, doing a particular thing, that has to be in writing, that agency must be in writing also.

Mr. Goodman: That does not apply to class suits, where the class is too numerous to bring before the court.

The Court: You may answer the question.

Q. Will you state, based upon your knowledge of the matter, your authority in behalf of the members to prosecute this suit?

Mr. Fewlass: I object to it on the basis that you can't prove an agency by the oral testimony of an agent.

The Court: You may answer the question.

A. As acting president of the International Union, the constitution gives me specific authority to act on behalf of the membership between board meetings.

Mr. Cole: I object to that on the ground that is absolutely hearsay.

The Court: I will sustain that objection.

Mr. Cole: I will ask that the answer be stricken.

Mr. Goodman: It is merely introductory. He referred

[fol. 6] to the constitution. Now I will point out the constitution.

The Court: Well, you may point out the constitution.

Q. Now I show you a pamphlet and ask you if you can identify it?

A. This, marked Exhibit 1, is a copy of the constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, U.A.W.-C.I.O. I refer to Article 13 of the Constitution, Sections 1 through 14, which deals with the duties of the International President.

Mr. Goodman: I wish to offer in evidence Exhibit 1, referring particularly to the sections that the witness referred to, relative to the authority of the president. I have presented it to counsel and counsel doesn't want to look at it. I therefore offer it in evidence.

Mr. Cole: I have no objection to the entire document being admitted in evidence, for whatever it may be worth.

The Court: Very well, it may be admitted.

A. I can read from the constitution the general authority of the president. On Page 32, Article 13, Section 1, states:

> "The International President shall preside at all sessions of the International Convention and all sessions of the International Executive Board. He shall perform such other duties as are necessary to protect and advance the interests of the International Union, the general membership through the official publication. He shall report his activities to the quarterly meeting of the International Executive Board for approval or rejection and to the International Convention.
>
> [fol. 7] "Section 2. Between sessions of the International Executive Board, he shall execute the instructions of the International Executive Board and have full authority to direct the working of this organization within the provisions of this Constitution and shall report his acts to the regular quarterly meeting of the International Executive Board."

I have been acting president since April 20 by virtue of the attempt to assassinate President Walter Reuther, who was disabled. Our constitution provides that in the absence of the President, the Secretary-Treasurer assumes

the President's duties; that is the reason I am Acting President. Apart from my authority under the constitution to protect the rights of the member in the union, we had meetings of our Policy Committee, in which we discussed the advisability and feasibility of our suit in relation to the question of the matter of protecting our membership; and in addition to that we had numerous representatives of our local unions, along with over a thousand members of our union, ask that this lawsuit be started. I believe that was after the strike was called. Concerning a suit before the strike was called,——

Mr. Cole: Object to that as calling for hearsay.

The Court: You may answer that question.

A. We considered ways and means of testing this particular act for several months. It was discussed on a number of occasions, methods of testing this particular act. We didn't reach any final conclusions until the Chrysler strike took place, as to the method of testing it.

Q. Now, was there any specific written authority given [fol. 8] you by anybody to represent them in the prosecution of a suit to vindicate the constitutional right to strike?

Mr. Cole: I will object to it for the reason if there is, the document itself——

The Court: He asked if there was. You may answer the question.

A. Yes, there is; there is authority by— Regarding that written report, I don't have it with me. We have affidavits signed by members of our unions, requesting us to take legal action testing this particular law.

Q. And how many signatures are there?

A. There are over——

That document is in our files somewhere. I have looked for it. I wasn't able to find it until this morning; it had been misplaced. I do not have it at the present time, I haven't found it up to this moment.

Well, I think I have already stated that the substance of this document is authority—requests of members of our union for us to proceed with this lawsuit; in their behalf.

Q. And how many signed it?

Mr. Cole: Same objection.

The Court: You may answer that question.

A. The exact number, we have it in our bill of complaint. I believe it is 1477a if I remember correctly. Referring to our bill of complaint, it says 1776. Referring to Paragraph numbered 3 of the bill of complaint, I have read that Paragraph and we claim, in this matter, the rights therein set forth. In this particular section of our bill of complaint, we state that our rights, guaranteed to us under the Fourteenth Amendment of the United States Constitution, are being violated. These rights are to urge by [fol. 9] speech and other forms of communication, the right to engage in a strike in the plants of the Chrysler Corporation, in order to obtain collective bargaining agreement on the matters of wages and working conditions and other conditions of employment.

There was a dispute between the members of the U.A.W. and the Chrysler Corporation, concerning the establishment of a proper scale of wages. The dispute arose about the middle of February, under the terms of our contract to give the corporation notification of our intentions to amend the wage agreement we had, and we notified the corporation about the middle of February of our intention to amend our wage provisions of the agreement.

The Court: Is there such a written document?

A. Yes, there is.

The Court: Then the writing would be the best evidence.

A. Mr. Matthews, who is the director of our Chrysler Department, can produce a copy of this notice. He has it in his files. I know the notice was sent. Under the provisions of the act it is mandatory for us to give a sixty day notice to an employer in the event we wish to amend a contract or terminate a contract. It is further necessary that thirty days prior to the termination of the agreement, we notify the Department of Labor, Federal Department of Labor, of disputes being involved, and in this particular case we followed both steps.

I identify Exhibit 2 as a copy of a notice to—what we call a sixty day notice to employer, that was sent to the Chrysler Corporation, 341 Massachusetts Avenue, Highland Park, Michigan, by Mike Novak, President of the [fol. 10] Dodge Local, and by Norman Matthews, Director of the Chrysler Department.

Mr. Goodman: I wish to offer Exhibit 2 in evidence. Before we question Mr. Mazey further, all counsel here have arrived at an understanding under which the necessary evidence concerning the notice will be established.

Now, I have a book which contains copies of all of the notices required by the federal and the state laws relative to labor disputes. These copies have been exhibited to opposing counsel, and we are ready to produce it and can introduce each and every notice in respect to each and every local in evidence.

In order to avoid making a record altogether too extensive, and for that reason quite impractical, though possible, it is understood among us that the sending of these notices and the due receipt thereof, that is to say, compliance with the National Labor Management Relations Act notice requirements and the Bonine-Tripp Act notice requirements have been made, compliance has been had.

I, however, shall be obliged to produce, upon demand, at any time, the record of those notices, and that obligation shall continue throughout the course of this case.

Mr. Cole: I would like to add something to it:

I am in accord with the statement of counsel. We have been substantially agreed that the various notices required in labor disputes have been given by the unions involved in this particular controversy, and when I say unions, I mean the International Unions and the various locals or any other segment of the organizations involved, both under the federal laws, applicable laws, and the state applicable laws, up to the provisions of the Bonine-Tripp [fol. 11] Law in regard to the election notices, if any. I don't believe the union has any particular function in that respect. In other words, the dispute in this lawsuit involves the non-compliance by the union in their bill of complaint, as predicated upon the non-compliance with the election provisions of the Bonine-Tripp Act.

Now, if counsel, according to his statement, will keep available for our use, for the purpose of putting in evidence in this court, or in the Supreme Court, if the case should go there, or any other court, these documents we are now stipulating as having been executed and served, and so forth, then I am perfectly willing to stipulate that all of these notices were given. It will thereby save a great deal of time and cut down the volume of this particular record.

There is one more thing I wanted to stipulate before we go back to the witness, and that is that on May 11, 1948, that Mr. Norman Matthews, Director of Region Number 1, U.A.W.-C.I.O.,—received a telegram signed by Philip Weiss, Chairman of the Labor Mediation Board of Michigan, stating as follows:

"You are hereby advised that any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended."

Signed "Philip Weiss, Chairman Labor Mediation Board."

And the same telegram was sent to Mr. Walter P. Reuther, President of the U.A.W.-C.I.O. International Union.

Now, you stipulate those were received?

[fol. 12] Mr. Goodman: I stipulate this much,—I think you will agree with me. Incidentally, I want the record to show that Philip Weiss, Chairman of the State Labor Mediation Board, is present, and you are making this stipulation for the purpose of obviating oral testimony on his part.

I would ask for the further stipulation that these telegrams were sent in view of the fact that efforts at mediation and settlement had become exhausted, and it then became necessary, pursuant to the law, to demand a strike election, and that these notices constitute that demand pursuant to the law.

Is that correct, Mr. Weiss?

Mr. Weiss: That is correct.

Mr. Cole: We will so stipulate.

Mr. Goodman: Counsel so agree?

Mr. Cole: Yes.

A. All the locals got those telegrams, a duplicate of what we read into the record here. In connection with the assertion of the right to strike in the Chrysler dispute, that same right is deemed necessary in other and similar disputes. We have exactly the same set of facts and circumstances in a number of other disputes as we have here in the dispute with the Chrysler Corporation. The matter

of wages, working conditions and other conditions of employment, and ——

Q. Now, can you name some of those matters which have arisen since the Chrysler dispute?

A. Yes.

Mr. Cole: Object to that as immaterial.

The Court: Sustain that objection.

A. After the State Board of Labor Mediation demanded an election, pursuant to the Bonine-Tripp Act, we ignored the request. We informed Mr. Weiss that we would not [fol. 13] agree to the election. In this matter of not agreeing to the election, those participating were our Chrysler Department, the Presidents of our various local unions, and our entire Chrysler membership participated in that decision. Those individuals, including myself, called a strike. We have a strike vote procedure applicable to the union. It is shown in the constitution of the union, it is specifically outlined.

Q. Will you refer to Exhibit 1 and read the sections applicable to the strike vote?

A. The procedure for strike action is covered in Article 49, Section 1, of our constitution, and begins on Page 95. Section 1 reads as follows:

> "Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of employment or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide by secret ballot whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

[fol. 14] "Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board."

I believe these two sections cover this phase of the problem. In connection with the Chrysler dispute, a strike did take place. We have a record of that strike action taken through the Executive Board, in the Chrysler matter. We can produce them, I can produce it this afternoon, if necessary. Before the Executive Board took action in calling this particular strike, a vote was taken, as a result of our [fol. 15] being able to reach a peaceful settlement with Chrysler Corporation on matters in dispute.

Q. Now, what were the circumstances of the taking of the vote, how was it handled?

A. Special membership meetings were called, and a vote was taken by secret ballot in each of the local unions.

Mr. Cole: I object to that again on the ground that they are putting into this record all that is hearsay on what was done.

The Court: It may stand. Proceed.

Q. Now, was there any election taken in accordance with the Bonine-Tripp Act?

A. There was not. The International Executive Board of the U.A.W.-C.I.O., in granting strike authority to the Chrysler locals, made the authority granted the authority at the discretion of the Chrysler Director, Norman Matthews. He was given full power and authority to call a strike at the time that he deemed necessary and advisable. I am familiar with the events in general attending the strike. The strike was supported by the overwhelming members of our union. We had picket duty and other strike activities that normally take place in a strike. Mr. Matthews, our Chrysler Director, has copies of letters from the local unions, in which they informed him of the percentage of strike vote in each of their local unions. All of the members participated in the strike by refusing to work during the strike. I had supervisory authority over the conduct of that strike, as Acting President of the U.A.W. The fundamental object of the Chrysler strike is to reach a satisfactory wage agreement with the Chrysler Corporation for our membership. We were unable to reach this [fol. 16] agreement in peaceful collective bargaining sessions, and therefore we had to call a strike in order to force what we considered justified demands.

I identity Exhibit 3 as an authorization on the part of 1776 members of our union, authorizing me as Secretary-Treasurer and Acting President of the union, to test the constitutionality of the Bonine-Tripp Act on behalf of these members.

Mr. Goodman: I wish to offer Exhibit 3 in evidence.

The Court: This Chrysler strike has been settled?

Mr. Cole: Yes.

The Court: It now becomes a moot question, doesn't it?

Mr. Goodman: No. They can—— Whoever participated in this strike in violation of the law, if the law is constitutional, can be prosecuted, so the need for the injunction as to the Chrysler strike continues. But not only that. This case brings into question the constitutionality of the act.

The Court: I understand it does.

Mr. Goodman: But as to any violation of the act, it is not a moot question. They are subject to prosecution should the act be held constitutional.

Witness: The Chrysler Corporation has the Dodge Plant, DeSoto, Plymouth, Chrysler Jefferson and Ker-

cheval, Chrysler Highland Par , Amplex Plant, Drop Forge; a plant in Marysville, Michigan; plant in Kokomo, Indiana; plant at Evansville, Indiana; plant at Newcastle, Indiana; and a plant in Los Angeles, California. I may have missed one or two.

A. The U.A.W. and its constituent locals, hold collective bargaining rights in the Chrysler plants. We have bargaining rights for all Chrysler plants.

[fol. 17] We have a master contract with the corporation that gives us bargaining rights for plants in Michigan and plants in Indiana and plants in California.

I identify a pamphlet, marked Exhibit 4, as a copy of collective bargaining agreement between our union, U.A.W.-C.I.O., and the Chrysler Corporation, covering plants in the jurisdiction of Local Number 7, Detroit; Local 3, Detroit; Local 140, Detroit; Local 47, Detroit; Local 227, Detroit; Local 490, Detroit; Local 51, Detroit; Local 375, Marysville, Michigan; Local 230, Los Angeles; Local 371, Newcastle, Indiana; Local 705, Evansville, Indiana; Local 685, Kokomo, Indiana; and Local 961, Detroit, Michigan.

Mr. Goodman: I wish to offer Exhibit 4 in evidence. Any objection?

Mr. Cole: I object to it on the ground the witness states it is a copy of a document. The original is the best evidence.

Mr. Goodman: All right, we will produce the signed original this afternoon.

A. I am familiar with the character of industrial operations conducted by the employers of the U.A.W. members.

The parts flow from Detroit to a number of assembly plants: For example, panels and motors and various component parts of the automobile. And similar parts plants in the State of Indiana ship materials to Detroit plants.

The Court: Well, he said it was similar to interstate commerce.

For example, the Kokomo Plant has a foundry. Many castings are sent to Detroit from the Kokomo Plant.

Mr. Fewlass: May I ask if it is counsel's claim,—if counsel is basing his claim on the fact that there is a conflict [fol. 18] between the Bouine-Tripp Act and the Taft-Hartley Law, or are you basing your claim on the proposition that the Taft-Hartley provides exclusive jurisdiction in the Chrysler strike?

Mr. Goodman: Both of these things are part of my claim; it may be stated in both of these terms. The point raised is that the Bonine-Tripp Act, that is, the election features of the Bonine-Tripp Act, conflict with the provisions of the Taft-Hartley Act, and the election features of the Bonine-Tripp Act are invalid as assuming to legislate in a field of legislation occupied by Congress, as to which the congressional legislation is exclusive.

That is all, Mr. Mazey.

Cross-examination.

By Mr. Cole:

As a representative of the International Union, I attended the so-called mediation sessions conducted by the Michigan Labor Mediation Board. There were joint sessions held, both the state mediators and federal mediators were present at the sessions.

At those sessions I and other members and officers of the union participated, along with representatives of the employer, the Chrysler Corporation. And members of the Labor Mediation Board also were present, of course.

Q. And this mediation in which these parties participated was in progress at the time this strike was called, was it not?

A. Mediation ended when we called the strike. We called the strike when our efforts at mediation failed.

Q. Well, the mediation was still going on at the time the strike was called, was it not?

[fol. 19] A. No. Our meetings with the corporation and meetings with federal and state mediators had broken off at the time we called the strike.

Q. In other words, the mediation arrived at a point where you and perhaps others decided that it was useless to further mediate?

A. That is correct.

At the last meeting that I attended, we informed the corporation that we would put our strike into effect when we left that meeting. I think it was then around seven o'clock or 7:30 in the evening, if I remember correctly. We called the strike the next morning, on May 12th. The last day that I attended the mediation hearings was in the evening of May 11th. The strike became effective at ten o'clock in the

morning on May 12th. Our notice to those concerned, who we wanted to strike, went out during the evening or night of May 11th. I participated in the calling of that strike. The strike was authorized by the International Executive Board of our union. The strike was called by the director of our Chrysler Department, Norman Matthews, who was given authority to call the strike at his own discretion, by the International Executive Board. I participated in the decision to call the strike at that particular time.

I was Matthews' superior officer. This authority, which I say was granted by the International Board, to strike which authority was given to Matthews, was put in writing by the International Board. That writing is still in existence. I have access to it. I can produce it this after oon.

On the evening of May 11th we called a special meeting of the International Executive Board of our union to review the Chrysler situation, and the entire board approved the [fol. 20] calling of the Chrysler strike on the evening of May 11th. The board met in my office, 411 West Milwaukee, in Detroit, Michigan. Those members of that board are resident in various parts of the country. We considered the Chrysler matter a pretty serious matter, and we had called the meeting of the International Executive Board on the eve of our pending strike with the Chrysler Corporation.

Q. So that in advance of the time, at seven o'clock in the evening, on May 11, 1948, when you and other union members, whoever they were, walked out of the mediation proceedings, you had already, or someone had, called the executive board together to decide some problems in regard to the strike, is that right?

A. Yes, I called the board to decide one or two questions. One, there is always a possibility of our reaching an agreement with the Chrysler Corporation, prior to our deadline on May 12th, and the board would have to approve of any agreement that we reached with the Chrysler Corporation before the agreement could be put into effect. Of course, there was always the possibility of our not reaching an agreement, and we wanted the advice and benefit of counsel of our entire board before we made our final decision in the matter.

Q. Well then, do I understand your testimony to be that the entire Executive Board of the International Union of the U.A.W.-C.I.O. participated in these deliberations on the calling of the strike?

A. That is correct. We reviewed the negotiations that had taken place at Chrysler's.

Q. I didn't ask you that. Did they participate in the agreement to call the strike?

A. Yes, they did.

Q. And who are the members of that board?

[fol. 21] A. We have twenty two members of the board. You want their names? I think I can give you all the names without too much difficulty. This particular meeting included the Vice Presidents, Richard Gosser and John W. Livingston; Board Members, Norman Matthews, Michael Lacey, Edward Cote, Joseph McCusker. I know all the members of our board. I can give it to you just as quickly as I can read it. William McAulay, Donnel Chapman, Leonard Woodcock, Richard Reisinger, Paul Miley, Charles Ballard, Ray Berndt, Pat Greathouse, Russell Letner, Cyril O'Halloran, George Burt, Thomas Starling, Martin Gerber and Charles H. Kerrigan and myself.

Q. Now, this board that you have just named had already granted the authority in writing, you state, to Matthews, to call this strike if he saw fit?

A. That is correct.

Q. And was this meeting of the board held before the strike was actually called?

A. Yes, it was.

Q. And all of these board members participated in the discussions, did they?

A. I would say the majority of the board members participated. I am not positive that we had one hundred percent attendance at the meeting. I believe that the entire board was present.

Q. Well, can you tell me any member of the group that you named, with the exception of Walter P. Reuther, that did not participate in the strike called?

A. To my recollection, I believe all the board members were present that evening.

Q. Was Mr. Reuther there too?

A. Mr. Reuther was not present. I didn't mention Mr. Reuther's name.

[fol. 22] Q. No, I know you didn't. I just wanted to make sure he wasn't there. Well, then, was the strike called by the concerted action of that group or by Mr. Matthews?

A. Mr. Matthews actually called the strike because we gave him authority to call the strike. At this particular meeting we reviewed the situation and we reaffirmed our previous position granting him authority to call the strike.

Q. Well, didn't you also discuss with him the question of whether or not he should call the strike?

A. Yes; and it was the unanimous decision of the board that he should go ahead with the strike.

Q. So that this strike was really put into effect by the joint and several action of the persons that you have named on the night of May 11, 1948?

A. Technically, all strikes are put into effect by our board, but we delegated the authority for the actual calling of the strike, putting the strike machinery into effect, in the hands of Mr. Matthews, and he actually called the strike with our approval and authority granted by the International Executive Board.

Q. But isn't it a fact that all the members participating in that meeting we have been discussing, of this group of men that you have just recently named, did actually participate in agreeing to call the strike?

A. Yes.

Q. When you left the negotiations or mediation on the night of May 11, 1948, after having made a strike threat, the negotiations were supposed to continue, were they not?

A. They were not. Negotiations were broken off at that stage of the game. There was no point to continuing them.

[fol. 23] Q. They were broken off by the action of the union and its representatives, is that correct?

A. I would say they were broken off by the refusal of the company to meet our just demands.

Q. When you had made that determination in your mind, that they had refused to meet your just demands, you then broke off negotiations?

A. That is correct. The committee broke off negotiations.

Q. That was when Mr. Weiss, as Chairman of the Labor Mediation Board, sent out the telegram introduced here, was it not, calling attention to the election provisions, and so forth?

A. I believe it was sent out the same night, if my memory serves me correctly.

I know offhand, there are approximately 200,000 employees of the Chrysler Corporation in Wayne County.

I believe I stated on direct examination that it was my opinion, perhaps that of others, that the Bonine-Tripp Act limited the constitutional rights of the union.

Q. And this action which was taken in the Chrysler strike was to your knowledge against the provisions of the Bonine-Tripp Act, was it not?

A. Yes; the action was taken to protect our membership against the provisions of the act.

Q. You knew what the provisions of the act were, did you not?

A. Yes; I did.

Q. At the time the action was taken?

A. That is correct.

Q. And you as an individual decided to take the action that you did, regardless of what the law said on the subject?

A. Yes.

[fol. 24] Q. And that was the attitude of the other parties participating in the conference?

A. That is correct; that was the attitude of our membership.

Q. And it was the attitude of the officers of the various units of the union, was it?

A. It was.

Cross-examination.

By Mr. Fewlass:

Looking at Exhibit 3, my signature does not appear on this document. I did not sign this particular document. I saw several of the people whose signatures are there, sign it. I don't recall their names offhand. The typewritten portion of Exhibit 3 was prepared by our legal counsel, Mr. Rothe, at my request. The statement was given me after the signatures were obtained by 1776 members of our union; they were circulated by members of our union, the various local unions. I don't know any particular individual by name who circulated this.

The only plaintiff in the list of plaintiffs that was present at the board meeting itself was Matthews and myself. The other plaintiffs that are named in the bill were not present at the board meeting.

Q. Now I will refer to Article 49 on Page 95 of your constitution, with which you are no doubt familiar, the provision as follows:

> "If the local union involved is unable to reach an agreement with the employer without strike action, the recording secretary of the local union shall prepare a full statement of the matters in controversy and forward the same to the regional director and the International President."

[fol. 25] A. That is right.

Q. Did you receive such notices from all of the local unions involved?

A. No.

Q. Prior to taking this strike action?

A. In a case of the corporation contract——

Q. Just answer my question. Did you receive notices in this case?

A. No, no; the answer is no.

Q. Now I will quote from the constitution again:

> "Upon failure to effect a settlement, he shall send" —that is the regional director—"the international president his recommendation of approval or disapproval of the strike."

In this instance did you receive such a recommendation of approval of a strike, or disapproval of a strike, from the various regional directors involved?

A. We received it from Regional Director Matthews, who has complete jurisdiction over all of the Chrysler plants.

Q. That is under Region 1?

A. He is director of Region 1. He is also Chrysler Director and his Chrysler directorship gives him jurisdiction over all the Chrysler plants, regardless of what geographical region they may be located in.

Q. Then after that did you prepare a statement of the matters in controversy and forward a copy to each member of the International Executive Board?

A. We discussed and took action on this question at a special board meeting of the International Union.

[fol. 26] Q. You didn't prepare such a document?

A. No; it wasn't necessary. We called a board meeting instead.

Q. It was only necessary in that the constitution provides it?

A. No. The constitutional provision deals with the obtaining of strike approval at times when the board isn't in session. Our board has regular quarterly meetings, and of course we have special meetings on occasions, but between board meetings, in order to obtain routine normal strike approval, it is necessary for the President of the International Union to inform the board members of the matters in dispute and ask for a vote on the same. In other words, the President has authority under the provision of the constitution to grant emergency strike authorizations.

Q. Well, then this strike was called as an emergency under Section 3, is that right?

A. No, it was not. We had either a regular or a special board meeting in progress in Detroit at the time a request was made for strike authorization in the Chrysler plants, and we had a full hearing and discussion of all of the issues involved, by the full board, and the board took action after hearing a report from the Chrysler director and hearing a report from the president of the union.

At this board meeting. Mike Lacey was there.

Q. At the deliberations with this board, did you urge that the strike be called?

A. It wasn't necessary for me to urge a strike be called.

Q. Did you or didn't you?

A. I expressed an opinion that the strike should proceed, yes.

[fol. 27] Mr. Fewlass: That is all.

The Court: That is all.

Recross-examination.

By Mr. Cole:

I recognize those documents. Those duplicate notices from apparently all of these local unions to the State Labor Mediation Board, a duplicate original copy of the notice required to the Federal Mediation and Conciliation Service at Washington, D. C., and it is required under the so-called Taft-Hartley Act were given to the Michigan State Labor Mediation Board, in accordance with the Bonine-Tripp Act. We gave notice under the federal law, but you spoke about

notice given to the state. The notice to the state, I am not certain whether or not it is provided for in the federal law; I don't believe it is. At any rate, these notices were given. We notified both the state and federal agencies as of March 11, 1948.

Mr. Fewlass: May I make certain that I have the proper understanding that the record of the vote will be produced?

Mr. Goodman: Yes.

Redirect examination.

By Mr. Goodman:

We are continuing to ignore the provisions of the Bonine-Tripp Act as it pertains to strike elections.

Recross-examination.

By Mr. Fewlass:

Q. Was this labor dispute settled?

A. Yes, it was settled.

Q. When?

[fol. 28] A. I don't recall the exact date. We had an approximately three week strike at Chrysler Corporation.

Q. Can you get the exact date?

A. Yes.

The Court: We will now adjourn this case until two o'clock.

(Noon recess.)

July 19, 1948,
10:00 o'clock A. M.

Norman Matthews, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

I live in the City of Detroit. I am Co-Regional Director of the U. A. W. C. I. O. and Chrysler Director. I had occasion to call a strike in the Chrysler plant. I am familiar with the election provisions or requirements of the so-called

Bonine-Tripp Act. I certainly am. I did not wholly comply with them before calling the strike. We complied with the first two steps, but the third step we did not comply. I mean the first two steps that we made application under the Bonine-Tripp, we had mediation on the Bonine-Tripp, but we did not comply with the so-called vote, the election. I am a member of the U. A. W. Board.

Q. And did you, as a member of the board, violate in other instances the election requirements of the Bonine-Tripp Act?

A. Yes, sir, I did.

Q. Now, you mean by that that you authorized, called [fol. 29] or instigated strikes without a majority of those in the collective bargaining units holding an election under the statute?

A. That is correct. Another of those companies was the Timken Detroit Axle Company. That strike is still pending, and is not settled. Another of those companies was the Champion Spark Plug Company, and that strike is continuing and unsettled.

Q. Did you have anything to do with calling the strike in the Gray Marine Motor Company?

A. Inasmuch as it was authorized by the International Executive Board, yes.

Q. And did you have anything to do with calling the strike of the Warner Aircraft Corporation?

A. Inasmuch as it was authorized by the executive board, yes, sir.

Q. In other words, you participated in authorizing the strike without compliance with the Bonine-Tripp Act?

A. That is correct.

Q. Do you intend in good faith to violate the election requirements of the Bonine-Tripp Act?

A. I certainly do.

Mr. Goodman: You may cross examine.

Cross-examination.

By Mr. Fewlass:

I participated in a meeting of the International Union Executive Board of the U. A. W. C. I. O. on Tuesday, April 20, 1948, in the conference room, 808 Book-Cadillac Hotel, Detroit, Michigan. I can't recall if there was a meeting of

the executive board prior to that time. On May 11. I was in court last Friday, the last day this case was in court. I heard Mr. Mazey's testimony.

[fol. 30] I identify Exhibit 5 as the proceedings of a special session of the International Executive Board, U. A. W., held on Tuesday, April 20, 1946, in the conference room, 808 Book-Cadillac Hotel, Detroit, Michigan. I attended that particular meeting. That is a transcript of the proceedings. On page 6 I made the statement: "Mr. Chairman, I have—I move that I be authorized by this executive board to strike the Chrysler Corporation on the question of our wage demands at my discretion. I might say, Mr. Chairman, that we have complied with the Taft-Hartley Law, we have complied with the Bonine-Tripp Law, we have complied with the terms of our constitution whereas our membership has taken a two-thirds vote in all local unions. That being the case, I am asking for the board to give me this authorization at this particular time."

I made that statement. It was my understanding that I had complied with the Bonine-Tripp Law at that time. And therefore I moved to strike.

Q. Now, at that time you said, you stated that you had complied with the Bonine-Tripp Law, and at the present time you say you had not complied with the Bonine-Tripp Law. Will you clarify your positions for us, please, Mr. Matthews?

A. I certainly will, sir. The previous discussions on our executive board, we recognized constitutionally two points in the Bonine-Tripp Law. Point number one was the question of application; point number two was the question of mediation. We were instructed by the board, through our own consent on the board, to disregard the third step regarding the Bonine-Tripp, and that was the election within the plant, for the reason I had stated, which was understandable, of course, to the board there, the reason that I had stated that we had complied with the Bonine-Tripp Law.

[fol. 31] Q. Pursuant to your motion at that time, was there any strike action taken at that meeting?

A. I was given authorization at that meeting, if you read further in the records.

Q. The record shows that you were given authorization to call a strike?

A. Yes, sir.

Mr. Fewlass: I offer in evidence Exhibit 5.

The Court: I think anything that is material to the issues in this case may be admitted.

Q. Were there other strikes, or strike actions, discussed at this meeting?

A. I can't definitely say. The minutes of the board meeting will prove that.

Mr. Fewlass: I will want this book in the record.

Mr. Goodman: We have no objection.

Mr. Fewlass: I might say, for the purpose of the record, if the occasion arises where there is an appeal, I would be very glad to sit down with counsel and cull out that part that is immaterial to our issue. O.K.?

Mr. Goodman: O. K.

Q. Were there others at this meeting on April 20, beside yourself, who instigated the strike?

A. Definitely, yes.

Q. Who were they?

A. I can't recall. The book will prove exactly who attended and whose proxies were there at that particular time.

Q. Did Mr. Mazey at that meeting urge the strike action be taken?

A. Yes, he did.

Q. Did Mr. Reuther urge at that meeting that strike action be taken?

[fol. 32] A. Yes, he did.

Q. Did the other members of the executive board who were present at that meeting urge that strike action be taken?

A. We were all unanimous in our opinion there at that time. They did that in my presence. I was at the meeting on May 11th, of the executive board. Mr. Mazey was at that meeting. I think the majority of the board members were there, but I can't recall all of the members there at that particular time. Mr. Livingston, Mr. Gosser, Mr. Lacey, Mr. Cote and Mr. McCusker were there. I can't recall whether Mr. McAulay was there or not. I think Mr. Chapman was there. Mr. Woodcock, Mr. Reisinger, Mr. Miley and Charles Ballard were there. I think Mr. Berndt was there, Pat Greathouse was there. I don't think Mr. Letner was there; I am not sure. I am fairly sure

Cyril V. O'Halloran was not there; he is from the Coast. George Burt was there. I am not quite sure if Thomas J. Starling was there. Martin Gerber was there. I don't think Charles H. Kerrigan was there.

Q. Did all the gentlemen who were there, as members of the executive board, come to the unanimous decision that they should strike at that time?

A. They certainly did.

Q. Were there none at this board who were opposed to a strike prior to taking the election?

A. None at all.

Q. Did they all urge in concert and instigate this strike?

A. They certainly did.

Redirect examination.

By Mr. Goodman:

Q. Now, Mr. Matthews, since the Chrysler strike there [fol. 33] have been numerous U.A.W. strikes, all of which you have instigated, isn't that so?

A. That is correct.

Q. And in any of them was the election requirements of the Bonine-Tripp Act complied with?

A. I would say there was one exception, and that was done violating our instructions at that particular time, — the Divco Laboratories, I think it is Local 246, on the West Side of Detroit. That was some three or four months ago but wasn't a wage issue. It was a disciplinary action which the company took upon the employees there at that particular time.

Q. Now, will you state the approximate number of strikes that you instigated without complying with the election requirements of the Bonine-Tripp Act?

A. I would say there was around fifty or sixty of them, probably.

Mr. Goodman: That is all.

Cross-examination.

By Mr. Cole:

I mean fifty or sixty different companies, industrial organizations, small and large, that is in the State of Michigan. And as to Wayne County, I would say at least twelve or fifteen.

Q. Are those strikes still going on?

A. Some of them are.

Q. Well, how many strikes currently are going on in Wayne County by U. A. W. C. I. O. members, through your instigation of such strikes in violation of the Bonine Tripp Law, in other words, how many of those strikes are continuing?

A. I would like to qualify my statement with this, if [fol. 34] you don't mind: I am interested primarily, of course, in the strikes which come actually under my jurisdiction as the Regional Director on the East Side, or Chrysler Director. Certainly at our board meetings we authorize strikes in other parts of the state, but after the strike has been authorized, it is entirely up to the regional director servicing that particular section of the state to process the strike, and therefore I am not conversant with the actual strikes outside of the City of Detroit or outside of the East Side of Detroit, so to speak. On the East Side of Detroit, we have at the present time, to my knowledge, the Gray Marine Strike; we also have the Champion Spark Plug strike, and Fitzsimmons, which is a unit of 155. Now, I understand as of this morning, the tool and die strike has been settled, but I would say Fitzsimmons would not have been settled, because their production unit of Local 155, which is an amalgamated local union, —I would say at the present time, on the East Side of Detroit, we have three strikes pending or in progress at this time; it might be more, but I don't recollect there are any more.

Q. Your participation in the instigation of the strikes, East Side or West Side or around the state anywhere, consists of two different phases of your authority then, in one as Regional Director of Chrysler Unions, or the East Side Director of U. A. W. C. I. O., in Detroit; you not only participate with the governing board in the calling of the strike, but actually call the strike itself is that correct?

A. That is correct.

Q. And then in strikes other than those under your specific direction, you participated as a board member in the calling of such strikes?

[fol. 35] A. In the authorization of a strike, that is correct. U.A.W. C.I.O. members in Michigan, I would say

there are approximately sixty thousand members. And in Wayne County I would say approximately fifty-five thousand members. Under our union constitution, it is provided that the members of these various local unions have an election under union auspices on the calling of a strike. Such a vote was held in regard to the Chrysler strike. We have the record of that vote on file here, I think; our attorney has the record here.

Q. Do you have any records, Mr. Matthews, or does an other officer of your union have records, to show how many people voted in these various elections?

A. I don't have the record in my office, but——

Q. Where would they be?

A. I would imagine we could get those records from the local unions involved. I think the reports are on a percentage-wise basis, is that correct?

Q. Yes, I am not interested in the percentage of those that voted. I am interested in how many members of the actual union participated in the strike vote election?

A. I have no knowledge of how many participated, but I do know this, that——

Q. Well, there is no question pending, Mr. Matthews. The record of such a vote would, if kept according to union procedure, show the number who actually voted, would it not?

A. Yes, sir.

Q. And the records of the local would also show the number of actual members of such a union, would it not?

A. That is correct.

[fol. 36] Recross-examination.

By Mr. Fewlass:

After the authorization I received to call a strike on April 20th, then after the confirmation again on May 11th, I certainly did actually call a strike subsequent to the meeting on May 11th, I think the meeting was held after we broke off negotiations with the Chrysler Corporation, around eight o'clock that night, I met with my executive board——

Q. Is that the same group that you had reference to a few minutes ago, that you named?

A. That is correct. I met with my executive board and reported the lack of progress with the Chrysler Cor-

poration, and reported that I had broken off negotiations, stating to the board at that time that I intended to call the employees of the Chrysler Corporation out on strike the following morning at ten o'clock, and the board concurred with my position that particular evening.

Q. What did you do the next morning? How did you set this machinery in motion to call the strike?

A. Subsequent to the meeting with the board, I met with the Chrysler conference which are delegates from all Chrysler local unions, in the per capita basis, same representation as they send to the national convention. Those delegates are not necessarily the officers of the local union. Some might be and some might be other than officers. I met that evening with them. There are some delegates here, I would say, Brother Barber, Brother Art Brudson, Brother McPherson, Brother Walter Rudd; I don't know whether this Brother was a delegate or not; Brother Cook, and various other people. We could easily give you the names of all the delegates there at that particular time. [fol. 37] It was a pretty turbulent meeting, I might say that. I was trying to soft pedal on certain things, and there were a militant bunch of people there that night, and whether I wanted a strike or not, which I was in favor of, striking the corporation, I am afraid that—Well, they concurred unanimously in pulling the plants the following morning at ten o'clock.

Q. Did you go to the meeting and say that you had such authority, and that you called a strike?

A. Definitely.

Q. And all the delegates concurred with that at that time?

A. Absolutely, all those delegates that were present. That meeting was held in the local hall of Local 490 on Oakland Avenue. I forget the cross street. I don't think there was a record kept of any minutes, particularly, taken at that meeting, which meeting was held in this local hall, located on Oakland. And what is the street number?

A Voice: 11812.

A. 11812 Oakland Avenue.

Mr. Fewlass: That is all. Thank you.

Redirect Examination.

By Mr. Goodman:

Q. Mr. Matthews, are there any non-members of the U.A.W. employed at Chrysler, to your knowledge?

A. Yes, sir.

Q. And they, of course, would not participate in any union vote, would they?

A. That is correct.

Mr. Goodman: That is all.

Mr. Cole: That is all.

The Court: That is all.

[fol. 38] Philip J. Weiss, being first duly sworn, testified as follows:

Direct Examination.

Mr. Cole: I want to state on the record that Philip Weiss, called to the witness stand by Mr. Goodman, is the Chairman of the State Labor Mediation Board, and is produced here by myself at Mr. Goodman's request, the same as he produced the plaintiffs in this case. Mr. Weiss is a state officer.

By Mr. Goodman:

Q. My full name is Philip Weiss. I reside in the City of Detroit, I am an officer of the State of Michigan. I hold the office of Chairman of the Labor Mediation Board. Our board is governed by a certain law known as the Bonine-Tripp Act; I am familiar with the provisions of that act which make unlawful a strike not authorized by a majority vote in the collective bargaining unit. That provision has not been ignored by the U.A.W.

Q. To what extent has it been complied with?

A. Well, that is hard to answer. We are continuously holding strike votes. In fact we held a couple of them last week, on behalf of—well, three of them last week, on behalf of the U.A.W. in Wayne County.

Q. Are there any instances in which the U.A.W. refuses to hold strike votes?

A. There have been, yes.

Q. About how many?

A. Let's see, I would say counting Chrysler, roughly, about nine.

Mr. Rothe: What about the tool and die cases?

A. I am counting them as an association. They are Local 55 and 157.

[fol. 39] Q. As to Local 155 and Local 157, how many plants went out on strike?

A. Well, I would roughly say around seventy-five or seventy-seven.

Q. And in all instances they did not comply with the election requirements of the Bonine-Tripp Act?

A. That is correct. But may I answer that further? The tool and die shops operate as an association, and they had been negotiating as an association, and 155 and 157 is always considered to them as one bargaining unit rather than a group of bargaining, or individual bargaining units.

Q. Now, did the U.A.W. comply with the election requirements of the Bonine-Tripp Act in connection with the strike now pending at Detroit Timken Axle Company?

A. No, they did not.

Mr. Goodman: That is all.

Mr. Cole: That is all.

Mr. Fewlass: No questions.

By Mr. Goodman:

Q. I show you a telegram, Mr. Weiss, which I will have the reporter mark as a proposed exhibit.

(Exhibit 6 marked by reporter.)

Proposed Exhibit 6 is a telegram. I sent that in my capacity as Chairman of the State Board of Labor Mediation.

Mr. Goodman: I wish to offer Exhibit 6 in evidence.

Mr. Cole: No objection.

Mr. Goodman: I would like to have it read into the record:

[fol. 40] "Mike Novak,

"President Local Number 3, U.A.W. C.I.O.

"D.L.R.A.M.

"Dodge Main,
"Chrysler Corporation,
"7900 Joseph Campau,
"Detroit

"You are hereby advised that any work stoppage prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939 As Amended,

"Philip J. Weiss, Chairman, Labor Mediation Board of Michigan."

Similar telegrams were sent to the officers of all locals involved in the Chrysler strike.

Mr. Goodman: That is all.

Mr. Fewlass: Before plaintiff's counsel calls the next witness, I would like to state that Friday Mr. Goodman served our office with a proposed supplemental bill of complaint, adding Paragraphs 16, 17, and 18, I think, to the Bill of Complaint.

Now, we proceeded on the theory this morning that that was going to be filed. Mr. Goodman stated that Mr. Southwell had to sign it yet, and if Mr. Southwell is here, we suggest that it be signed before we go any further, so we will be sure of what pleadings we are proceeding on.

Mr. Goodman: He isn't here.

Mr. Rothe: He will be here; he is on his way.

Mr. Fewlass: Well, if counsel will stipulate that the proposed supplemental bill of complaint is the one that he will file when Mr. Southwell gets here, and no other, then I think we can proceed on the theory that those are going to be the pleadings.

[fol. 41] Mr. Goodman: That is right, yes.

Mr. Rothe: Yes.

The Court: He said that is the one that is going to be filed.

Who is your next witness?

ARTHUR GRUDZEN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

I live in the city of Detroit, I participated in instigating a certain strike at the Chrysler Corporation.

Mr. Goodman: Cross-examine.

Cross-examination.

By Mr. Fewlass:

I am employed at the Chrysler Corporation, I was not at a meeting of the Executive Council of the U.A.W. C.I.O. on April 26, 1948; I am a member of the Executive Council of my local union. I was at a meeting of the committee called about 9:30, May 11th. Mr. Matthews was there.

Q. What did Mr. Matthews say about the strike that you recall?

A. Well, he come back to the delegate body of Local 490 on Oakland Avenue, in Highland Park, and made a statement that the negotiations between the U.A.W. and the Chrysler Corporation had broken off, that the corporation denied the wage increase that was offered prior to that time, I guess six cents, or something to that effect, and I would say the body at that time voted unanimously [fol. 42] to pull the plants out the following morning at ten o'clock.

Q. Did Mr. Matthews in any way suggest or recommend a strike, at that time?

A. Yes, he did.

Q. What did he say about striking?

A. Well, if I recall, he said that there was no need of any further negotiations because the corporation denied the increase in wages, and there was nothing else to do but to pull the plants out.

Q. Did he says anything about having an election under the Bonine-Tripp Act?

A. Not at that time, I don't recall, because I think we discussed that prior, in my own local union, I believe.

Matthews and Brother Gosser, the Vice-President, attended our special board meeting that I called, during the absence of Mr. Novak, and at that time we discussed the Bonine-Tripp Act, and we decided that we wouldn't live up to it.

Q. And consequently was a strike put in effect at the Chrysler Corporation?

A. Wednesday, on the 12th, at ten o'clock, yes, I would say that I and Mr. Matthews and the other members of that committee acted in concert to instigate this strike at that time to this extent, that the membership voted unanimously in our locals, and our board members——

Mr. Cole: Wait a minute. I am going to object to that statement. The record itself is the best evidence.

The Court: Sustain your objection.

Q. At this meeting did you and Mr. Matthews and the members at the meeting do any act that in your opinion would instigate this strike that occurred on Wednesday morning or the following morning?

[fol. 43] A. Definitely. We all took a position.

Mr. Fewlass: That is all.

Cross-examination.

By Mr. Cole:

I am Vice-President of a local union. I acted in the capacity as the President at that time; Michael Novak is the President, Local Number 3, Dodge Local Number 3. This group, of which I am an officer, Dodge Local Number 3, is a local of the Dodge Plant of the Chrysler Corporation. We have just one local, but we have units, and it is divided up into various units. I am the Vice-President of such local, Local Number 3. We have the records of that local in the office, and they are under my jurisdiction. I can produce them here. Those records would give you a percentage of the vote taken on the special membership meeting called pertaining to the strike vote.

Q. But they would not contain the number of persons who voted?

A. I wouldn't think so.

Q. So that if 20,000 men were employed at this plant, and an election were taken, and 400 voted, and 300 voted in

favor of a strike, your report would be seventy five percent in favor of strike, is that correct?

A. Well, we wouldn't do it that way. The vote was not taken that way.

Q. Do the records of your union show how this strike vote was conducted?

A. By a secret ballot, our records show how this strike vote was conducted, the percentage of it, yes.

Q. Well, isn't there a call for such a strike vote, a notice of some kind, by the officers of your union?

[fol. 44] A. In the plant, yes.

Q. Isn't a record kept of that?

A. I would say there is a record of it, with the exceptions of the amount of people that attended the meeting.

Q. What is the reason for keeping a dark secret the number of people who vote on that kind of an election?

A. I don't think our constitution requests—makes a provision for that. We more or less go according to the constitution. The constitution does not provide such a vote

Q. How many employees are there, of the Dodge plant of the Chrysler Corporation, that are members of the U.A.W C.I.O., if you know?

A. 17,900.

Q. All right, 17,900. Now, in view of the fact that your union keeps no account of the number of people voting under a union election on a strike vote, any percentage of that group might vote, is that correct?

A. Yes.

Q. And under your constitution a majority of those voting would swing the election one way or the other, is that right?

A. Yes.

Q. What percentage of a favorable vote is required in order to carry a strike vote?

A. Fifty-one percent.

Q. Now, that is fifty-one percent of the members who actually vote, is it not?

A. Right.

Q. That is all you count. All right. Now, assuming your figure to be accurate, that there are 17,900 U.A.W. C.I.O. members in Dodge Local Number 3, employed at the Dodge plant, Chrysler Corporation, if only ten per-[fol. 45] cent of those people attended and voted at an

election, and fifty-one percent of that ten percent, or one more than half, voted in favor of the strike, your report would be in favor of the strike, is that correct?

A. I would say so.

Q. Who has, other than yourself, any custody or control over the records of Dodge Local Number 3?

A. The Recording Secretary.

Q. Who is he?

A. Joseph Ptaszynski.

Mr. Cole: That is all.

The Court: That is all, Mr. Grudzen.

HARRY SOUTHWELL, having been previously duly sworn, as shown on Page 129 of this record, took the stand and testified as follows:

Direct examination.

By Mr. Goodman:

I am a resident of the City of Detroit. I am working for the U.A.W., Local 174. I am an officer of the U.A.W., President of the local union, local 174, West Side Local. I am familiar with the election provisions of the Bonine-Tripp Act, very much so.

Q. And have you called a strike in violation of the election provisions of the Bonine-Tripp Act?

A. Yes, I have.

Q. What strike is that?

A. The strike which is now currently taking place in the Timken Detroit Axle Company.

The Court: Any questions?

Mr. Fewlass: No questions.

Mr. Cole: No questions.

The Court: That is all.

[fol. 46] ALEX BARBOUR, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

My name is Alex Barbour. I live in Detroit. I am an officer in a U.A.W. union, Local 7. I am Chairman of the shop committee. I am familiar with the election provisions of the Bonine-Tripp Act.

Q. And have you called a strike, or participated in calling a strike, in violation of the election provisions of that law?

A. Yes, I have.

Q. What strike was that?

A. Chrysler strike.

Mr. Goodman: That is all.

Mr. Fewlass: No questions.

The Court: That is all.

HOWARD COLEMAN, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goodman:

My name is Howard Coleman. I live at 21200 Telegraph Road. I am the chief accountant of the U.A.W. I have charge of the membership list.

(Exhibit 7 marked by reporter.)

I can identify the paper marked as Exhibit 7, it is a statement of membership of the U.A.W. for six months beginning January, to June, 1948.

Mr. Goodman: I offer Exhibit 7 in evidence.

[fol. 47] Mr. Fewlass: No objection.

Mr. Cole: I don't want to raise any technical objection to it, your Honor. It is not the record; it is a summary, or a statement, allegedly taken from a record by an accountant.

The Court: Well, it may be admitted for what it is worth.

Mr. Cole: I don't know the value of it, or competency.

Mr. Goodman: That is all, Mr. Coleman.

The Court: Does that conclude your testimony?

Mr. Goodman: That concludes the testimony, your Honor.

The Court: Have you any testimony to offer, Mr. Fewlass?

Mr. Goodman: One other matter, your Honor, Emil Mazey, while on the stand, was asked a question by Mr. Cole, and this was the question: "And you represent the union in this suit?" And he said "Yes." Not only does he represent the union, but he represents all members, and I want to have him testify to that.

The Court: I take it for granted that he brings it in behalf of all members of the union.

Mr. Goodman: Yes.

Mr. Cole: The court undersfands it; there is no need of bringing him back.

The Court: I understood it that way.

Mr. Goodman: All right; that is all, your Honor.

The Court: Have you any testimony to offer?

Mr. Fewlass: May it please the court, defendant McNally now makes a motion to dismiss, for the reason that plaintiff has not sustained the burden of proof.

Mr. Cole: I will join in the motion, your Honor, and waive argument.

[fol. 48] The Court: I shall mark this matter heard and submitted, and ask to have briefs filed on the question of law.

STIPULATION AS TO EXHIBITS 3 AND 7

Counsel for the parties hereby stipulate upon the record that Exhibit 3 as hereto attached may be made a part hereof and that the signatures may be omitted, and that Exhibit 7 shows that the average membership from January to June, inclusive, 1948, in United Automobile Aircraft Agricultural Implement Workers of America, C.I.O. was, for Wayne County, Michigan—297,625; for the entire State of Michigan, 449,182 and for the United States and Canada, 869,626.

EXHIBIT 3

We, the undersigned, being employees of the Chrysler Corporation, desire in the County of Wayne full freedom to urge upon fellow employees to strike in concert with us for the purpose of enforcing the demands made by our repre-

sentatives for increased compensation for our labor in and for the said corporation.

We understand that Sections 9, 9a and 9b of Act No. 318 Michigan Public Acts of 1947 require that an election be held and make it unlawful to strike or instigate a strike unless such strike is approved by a majority vote in the plant or the bargaining unit.

We wish to exercise our right to strike in accordance with UAW rules and regulations of which we are members, and consider that our rights are impaired if they are subject to a determination of the majority of employees in any bargaining unit,

We are advised that the statutory provisions requiring such election and restricting our rights to strike in ac- [fol. 49] cordance with the union rules and our own volition are unconstitutional.

We hereby authorize the UAW and Emil Mazey, its Secretary and Treasurer and acting President, for us and in our behalf, individually or collectively as may be convenient, to make us parties to any suit whatsoever for the purpose of having the above mentioned statutory restrictions declared unconstitutional.

In Witness Whereof, we have hereunto set our hands this 14th day of May, 1948.

(Here follow the signatures of 1776 UAW members.)

In Circuit Court of Wayne County

Amended and Supplemental Bill of Complaint—Filed May 29, 1948

The plaintiffs named in the next paragraph respectfully show as follows:

1. The International Union of United Automobile Aircraft and Agricultural Implement Workers of America C.I.O. is a voluntary association of employees in the said industries, is a labor union, and has about 65,000 of its members employed as factory workers in the plants of the Chrysler Corporation in the County of Wayne, Michigan, and it is generally known as the UAW; Emil Mazey is its Secretary-Treasurer and Acting President, and appears

herein in his own capacity, and in behalf of 1776 factory employees of said Chrysler Corporation working in plants in said County, and has been duly authorized in writing by said employees to sign this Amended and Supplemental Bill of Complaint and prosecute this suit in their behalf; Norman Matthews is the U. A. W. Chrysler director; Arthur Grud- [fol. 50] zen, Alex Barbour, Wilson Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, and William T. Archer are employees of said Chrysler Corporation working in plants of said Company in the County of Wayne.

2. The defendant, James N. McNally, is the prosecuting attorney for the County of Wayne, Michigan, and has the duty of initiating and conducting prosecutions for crimes charged and alleged to have been committed in the County of Wayne.

The defendant, Eugene F. Black, intervening herein, as a party defendant, is the Attorney General of the State of Michigan, and pursuant to law (Secs. 176, 187 C.L. 1929) is authorized to intervene in any action and appear for the people of the State of Michigan; and when he deems that the interest of the State requires it, he may prosecute any criminal proceeding.

3. The plaintiffs, as individuals and in association, desire to exercise with full freedom certain rights guaranteed to the individuals under Section 4 and 16, Article 2 of the Michigan Constitution and the Fourteenth Amendment of the United States Constitution. These rights are to urge by speech and other forms of communication conducted in said County that employees of a certain industry known as the Chrysler Corporation and engaged in the manufacture of automobiles known as Chrysler, DeSoto, Dodge, and Plymouth in said County shall go out on strike and remain on strike without such strike being first approved as required by Section 9, 9a, 9b, and 9c of Act No. 318 Michigan Public Acts 1947, until a collective bargaining agreement is reached concerning wages and compensation in respect to their labor.

[fol. 51] 4. Sections 9, 9a, and 9b of Act No. 318 Michigan Public Acts 1947, if valid, makes such strike unlawful unless approved by a majority vote of the bargaining unit as determined by the Board of Labor Mediation and Sec.

22 of said act imposes criminal penalties for instigating, calling, or causing a strike to be placed in effect while mediation or election is pending.

5. There exists a dispute between the members of the UAW and the Chrysler Corporation concerning the establishment of a proper scale of wages and the State Board of Labor Mediation has exhausted efforts to mediate and has demanded that the employees of said Chrysler Corporation submit to an election concerning their right to strike pursuant to the above cited statute.

6. About ten per cent of the employees of said Chrysler Corporation in said County of Wayne eligible to vote in an above-mentioned statutory election are non-members of the UAW.

7. The said UAW has upwards of 500,000 members employed in factories in the State of Michigan, upwards of 200,000 of whom are residents of the County of Wayne. The said Union, for its members and the other plaintiffs, individually and in association assert their right to urge strike action, instigate strikes, call strikes, and to request the aid of others in such strike projects, free from the coercive effects of Secs. 9, 9a and 22 of Act 318 Public Acts of 1947, insofar as the said sections make unlawful and penalize the exercise of said rights unless such strike is approved by a majority vote in the election provided for in said statute, and this assertion of right and the need therefor applies to the existing dispute between the UAW member employees of the Chrysler Corporation, [fol. 52] and also to prospective disputes between UAW members and employers in the State of Michigan concerning the legitimate subjects of agreement between said employees and their employers.

8. Subsequent to the demand for an election by the State Board of Labor Mediation as set forth in Paragraph 5 hereof, and while said election was pending within the meaning of said Act No. 318 Michigan Public Acts 1947, the plaintiffs urged in said County that the employees of said Chrysler Corporation should go out on strike and caused a strike to be called pending said election and the officers of said UAW called a strike pursuant to the urging and instigation of those plaintiffs, and said strike was put

into effect. In the instigation, calling, and putting into effect of said strike there participated substantially all of the UAW members employed by said Chrysler Corporation.

9. All UAW members and the plaintiffs herein who are employees are engaged in the production of goods for Commerce as defined by the National Labor Management Act, and the employer - employee relations of all of said members affect Commerce within the meaning of said National Labor Management Act. The said Chrysler Corporation and all other employee UAW members are engaged in Commerce within the meaning of said Act, and they and their employers are subject to said Act.

10. The Chrysler Corporation operates plants in a number of states. The collective bargaining unit with respect to Chrysler factory employees as defined by and pursuant to the National Labor Management Act extends to the plants in the State of Michigan known as Chrysler, Jefferson, Chrysler Kercheval, Dodge Main, Dodge Forge, Dodge Truck, DeSoto, Highland Park, Amplex Harper and Marys-[fol. 53] ville; plants in New Castle, Kokomo and Evansville, Indiana; and plants in Los Angeles, California. For the employees in said bargaining unit, the plaintiff, the UAW is the accredited and recognized collective bargaining representative, and has caused a collective bargaining contract to be made with said Chrysler Corporation.

11. In connection with the existing wage dispute with the Chrysler Corporation, the requirements and conditions of Sec. 8(d) National Labor Management Act have been complied with. The UAW has served a written notice upon said Chrysler Corporation of the proposed wage rate termination sixty days prior to the time it was proposed to make such termination; it has offered to meet and confer with the said Chrysler Corporation for the purpose of negotiating a contract containing the proposed modifications; It has notified the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute and has simultaneously therewith notified the State Board of Labor Mediation; and it has continued in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of sixty days after such notice and until the expiration date of the contract; and the said UAW had served

notice upon the State Board of Labor Mediation of the dispute, together with a statement of the issues involved and of intention to strike, not less than ten days before said strike was to become effective.

12. The defendant, James N. McNally, is prosecuting attorney for said county, threatens to prosecute all persons who in said county instigate a strike or who shall call or cause a strike to be placed in effect while an election [fol. 54] is pending under said Section 9 of Act No. 318 Michigan Public Acts 1947.

The defendant, Eugene F. Black, as Attorney General of the State of Michigan, threatens to prosecute all persons who in said State of Michigan instigate a strike or who shall call or cause a strike to be placed in effect while an election is pending under said Section 9 of Act No. 318 Michigan Public Acts 1947.

13. Insofar as Act No. 318 Michigan Public Acts of 1947 subjects to criminal penalties persons who instigate a strike or who call or cause a strike to be placed in effect while an election is pending under said Section 9, and insofar as such election has application to a strike by reason of a dispute concerning wages or terms of employment in businesses not affected with a public interest not a public utility nor hospital, Sec. 9a of said statute is unconstitutional and void upon the following grounds:

(a) It deprives the plaintiffs of the right to associate together and with others for the purpose of mutual aid and assistance in strike action against their employers unless and until a majority in the collective bargaining unit, including those not associated with the plaintiffs, approve said strike and thereby deprives the plaintiffs individually and in association of liberty without the process of law contrary to Sec. 16 of Article II of the Constitution of the State of Michigan and the 14th Amendment of the Constitution of the United States, and in contravention of said Constitutional provisions and also of Sec. 4, Article II of the Constitution of the State of Michigan, it deprives the plaintiffs and those similarly situated of the liberty of speech.

[fol. 55] (b) It deprives the plaintiffs and those similarly situated of the right to take strike action against their employers unless such action is first approved by a majority

vote of the persons in a collective bargaining unit and thereby deprives said plaintiffs and those similarly situated of liberty without due process of law contrary to Sec. 16, Article II of the Constitution of the State of Michigan, and the 14th Amendment of the United States Constitution.

(c) In making the right to strike depend upon a majority vote in the collective bargaining unit, it deprives the plaintiffs and all employees of liberty to contract singly or collectively concerning the terms of their employment and thereby deprives the plaintiffs and all employees of liberty contrary to Sec. 16, Article II of the Constitution of the State of Michigan, and the 14th Amendment of the United States Constitution.

(d) Except as applied to employees not subject to the National Labor Management Act, in prohibiting strike action unless approved by a majority vote in the collective bargaining unit, it impairs the rights of representation and of collective bargaining possessed by the UAW, and its constituent locals pursuant to the National Labor Management Act 1947, in that it assumes to transfer these powers and rights to a majority in a collective bargaining unit in the State of Michigan, and empowers said majority to continue indefinitely a collective bargaining contract to maintain a condition of no such contract, or to approve terms of contract offered by an employer, contrary to the Commerce clause of the United States Constitution Act I, Sec. 8 (3).

[fol. 56] 14. The UAW brings this action in its own behalf, in behalf of its constituent locals, and its individual members.

15. Unless the election requirements of Secs. 9 and 9a of said statute are declared by this Court to be invalid in view of Secs. 4 and 16 of Art. II, Constitution of the State of Michigan, and the 14th Amendment and the Commerce clause of the United States Constitution, and unless the relief prayed is granted, the plaintiffs will suffer irreparable injury in respect to their said constitutional rights in that they and every employee in said industry may be subjected to the jeopardy of arrest, detention, and trial upon criminal charges, and in great multiplicity of suits, and this jeopardy both to the plaintiffs and to those whom they desire to

associate with in common action constitutes a coercion and a present and continuing impairment of the plaintiffs' constitutional rights of freedom of speech, freedom of association, and freedom to take strike action in concert with others for proper and lawful objects, not only in the present dispute, but in all future bargaining effecting UAW members, and the plaintiffs are without adequate remedy in the exercise and maintenance of these rights save in a court of equity.

Wherefore, plaintiffs pray:

1. That a temporary restraining order directed to the defendant, James N. McNally, issue out of this Court restraining the said James N. McNally, as Prosecuting Attorney, from instituting and from proceeding further in any prosecution involving alleged violations of Secs. 9, 9a, and 9b of Act No. 318 Public Acts of 1947, until determination of the Order to Show Cause; and that the said defendant be ordered to show cause if any there be [fol. 57] before this Court on Friday, the 21st day of May, at 2 P.M., why an interlocutory injunction should not issue continuing the terms of said restraining order pendente lite.

2. That Secs. 9, 9a, and 9b of Act No. 318 be determined to be invalid as in conflict with Secs. 4 and 16, Art. II, of the Michigan Constitution, the 14th Amendment of the United States Constitution, and Secs. 8(3) Art. 1 thereof.

3. That the intervening defendant, Eugene F. Black, as Attorney General, shall be subject to all injunctive relief which may be granted in this cause.

4. That a decree be entered permanently enjoining James N. McNally, as Prosecuting Attorney, and Eugene F. Black, as Attorney General, the defendants, from enforcing by any criminal prosecution and provisions of Section 9a, Act No. 318, Public Acts of 1947.

5. That the plaintiffs may have such other and further relief as shall be meet and as shall be agreeable to equity and good conscience.

The International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (Signed) Emil Mazey, Secretary,

Treasurer, and Acting President. (Signed) Emil Mazey, Individually, and in behalf of 1776 employees of Chrysler Corporation in said County. [fol. 58] (Signed) Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Reed, William T. Archer.

(Signed) Rothe & Zwerdling, Attorney's for Plaintiffs, (Signed) Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

STATE OF MICHIGAN,
County of Wayne—ss.

On this 28th day of May, 1948, personally appeared before me the above named Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, and William T. Archer, who being duly sworn, depose and say that they have read the foregoing Amended and Supplemental Bill of Complaint by them subscribed, know the contents thereof, and that the same are true, except as to those matters alleged to be upon information and belief, and these they believe to be true. Further deposes [fol. 59] the said Emil Mazey that he is Secretary, Treasurer, and Acting President of the said International Union of United Automobile, Aircraft, and Agricultural Implement Workers of America, C.I.O., and is authorized to sign this Amended and Supplemental Bill of Complaint in behalf of said union, and that he is specially authorized to prosecute this action on behalf of 1,776 Chrysler employees.

(Signed) D. Charles Marston, Notary Public, Wayne County, Michigan. My commission expires: 6/26/50.

In Circuit Court of Wayne County

Order to Show Cause and Temporary Restraining Order
—Filed May 17, 1948

At a session of said Court held in the County Building this 17th day of May, 1948.

Present: The Honorable Theodore J. Richter, Circuit Judge.

Upon reading and filing the Bill of Complaint in this cause,

It is ordered that the Defendant, James N. McNally, as Prosecuting Attorney for Wayne County, Michigan, be, and he hereby is restrained from instituting and from proceeding further in any prosecution involving alleged violations of Secs. 9, 9a, and 9b, of Act No. 318 Public Acts of 1947, until determination of the Order to Show Cause herein.

It Is Further Ordered that the said James N. McNally, as Prosecuting Attorney, show cause, if any there be, before this Court on Friday, the 21st day of May, 1948, at 2 P. M., why an interlocutory injunction should not issue continuing the terms of said restraining order during the [fol. 60] pendency of this suit, or until the further order of the Court.

It Is Further Ordered that the plaintiffs cause a copy of the Bill of Complaint and this order to be served upon the defendant at least two days before the hearing set upon this order.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, By A. Shedd, Deputy Clerk.

In Circuit Court of Wayne County

Appearance—Filed May 20, 1948

To the Clerk of Said Court:

Now Comes defendant James N. McNally and enters his appearance in the above entitled cause, In Pro Per, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, By J. Lynn Fewlass.

[fol. 61] To: Rothe & Zwerdling, Attorneys for Plaintiffs, 3635 Barlum Tower, Detroit 26, Michigan and Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

Please Take Notice that defendant James N. McNally enters his appearance in the above entitled cause, In Pro Per, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, By J. Lynn Fewlass.

Dated: May 20, 1948.

[fol. 62] In Circuit Court of Wayne County

Motion to Dismiss—Filed May 20, 1948

Now Comes defendant James N. McNally and moves the Honorable Court to dismiss the Plaintiffs' Bill of Complaint heretofore filed in this cause, for the following reasons:

1. That a court of equity has no jurisdiction to entertain the Bill of Complaint and to grant the relief sought therein, or any part thereof, as prayed in Plaintiffs' Bill of Complaint.

2. That the Plaintiffs have a full, adequate and complete remedy at law.

3. That the Bill of Complaint seeks to restrain criminal proceedings for violations of law and to restrain the defendant, a constitutional officer, from performing his official duties and exercising his official function as prescribed by law.

4. That there is no allegation in the Bill of Complaint that the defendant, as a public official, is proceeding illegally and improperly under a claim of right, or that he has threatened to proceed illegally and improperly against the Plaintiffs, under claim of right.

5. That the Bill of Complaint does not set out any other ground for equitable relief than the bare allegation of the unconstitutionality of a criminal statute and seeks the restraint of criminal prosecution thereunder, without essential allegations necessary to clothe the court with jurisdiction.

6. That the Bill of Complaint does not allege that there is any actual dispute between the defendant Prosecuting Attorney and the Plaintiffs, and a court of equity cannot [fol. 63] assume jurisdiction in a case where there is no actual dispute between the parties.

7. That the Bill of Complaint does not allege that the Plaintiffs have violated or intend to violate, or exercise any right contrary to, any section of Act No. 318, Michigan Public Acts of 1947, which carries a criminal penalty.

This Motion is based on the records in this court and cause, and on the affidavit of James N. McNally, the defendant herein.

James N. McNally, Wayne County Prosecuting Attorney, In Pro Per, J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant, 508 Wayne County Bldg., Detroit 26, Michigan, RA. 2370, Ext. 257.

Dated: May 20, 1948.

Duly sworn to by James N. McNally. Jurat omitted in printing.

[fol. 64] In Circuit Court of Wayne County

Intervention and Appearance of Attorney General—Filed May 21, 1948

Eugene F. Black, Attorney General of Michigan, by Ben H. Cole, Assistant Attorney General, hereby determines under the statutory authority vested in the Attorney General that intervention in the above entitled cause is necessary in order to protect the rights and interests of the State of Michigan, and the rights and interests of the people of the State of Michigan.

Therefore, Eugene F. Black, Attorney General of Michigan, by Ben H. Cole, Assistant Attorney General, hereby intervenes in the above entitled cause as a party defendant therein and hereby appears in said cause.

Eugene F. Black, Attorney General, Ben H. Cole, Assistant Attorney General, 1901 Cadillac Square Bldg., Detroit 26, Michigan, Randolph 5083.

Dated: May 21, 1948.

[fol. 65] In Circuit Court of Wayne County

Findings and Opinion of the Court—Filed May 22, 1948

At the hearing of the Order to Show Cause upon the issuance of a temporary injunction in this cause, the defendant moved to dismiss the Bill of Complaint.

It was argued that the jurisdiction in equity to enjoin the prosecution of criminal proceedings existed only as an incident of jurisdiction otherwise acquired; that the defendant had made no threat to prosecute any of the plaintiffs; and that the plaintiffs make no allegations that they have violated or intend to violate any penal provision of Act No. 318, Michigan Public Acts of 1947.

I find all of these contentions without merit. The jurisdiction of equity to protect property and civil rights against irreparable injury where the legal remedy is inadequate is clearly established. General Motors Corporation v. Attorney General, 294 Mich. 558, 564; Truax v. Raich, 239 U. S. 33, 37.

The Bill of Complaint adequately alleges that an election has been demanded by the State Board of Labor Media-

tion and that the plaintiffs as individuals and in association desire to urge that the Chrysler employees in the County of Wayne go out on strike and stay out on strike until a collective bargaining agreement is reached, and that Sections 9, 9a, and 9b of the statute make such strike unlawful, and Section 22 imposes criminal penalties for instigating such a strike while mediation or election is pending.

The law clearly penalizes what the plaintiffs desire to do, and this raises a serious question of whether the plaintiffs are threatened with the impairment of their constitutional rights.

[fol. 66] The remedy by defending against criminal proceedings is clearly inadequate. The excellent statement on this subject by U. S. Circuit Judge Murrah, for the Court in Stapleton v. Mitchell, Atty. Gen. 60 Fed. Supp. 51, 61, is worthy of quotation:

> "In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

The mere silence of the Prosecuting Attorney should not avail to keep the plaintiffs in jeopardy. The Attorney General intervening at the hearing has settled any question concerning prosecution or the threat thereof by announcing in open court he would require prosecution under the law unless such action was enjoined. Thereupon, plaintiffs' counsel stated that he would amend his Bill to show this.

The motion to dismiss is denied, and a temporary injunction may issue continuing the terms of the restraining order.

May 22, 1948.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, by Don Wojcik, Deputy Clerk.

[fol. 67] IN CIRCUIT COURT OF WAYNE COUNTY

ORDER DENYING MOTION TO DISMISS AND GRANTING TEMPORARY INJUNCTION—Filed May 27, 1948

At a session of said Court held in the County Building in the City of Detroit, this 27th day of May, 1948.

Present: The Honorable Theodore J. Richter, Circuit Judge.

The Order to Show Cause and the Motion of Defendant, James N. McNally, to dismiss the Bill of Complaint having come on to be heard, and the same having been duly heard, and the Court having made and filed an Opinion and Findings in relation thereto, on motion of Rothe and Zwerdling, and Harold Goodman of Counsel,

It Is Ordered that, pursuant to said findings and opinion, the said defendant's motion to dismiss be, and the same hereby is denied, and the intervention as a party-defendant of Eugene F. Black, Attorney General, having been noted,

It Is Further Ordered that the said defendants, James N. McNally, as Prosecuting Attorney for said County of Wayne, and Eugene F. Black, as Attorney General of the State of Michigan, be and they hereby are, pending this suit, and until the further order of the Court, restrained and enjoined from instituting and proceeding further in any prosecution involving alleged violations of the election requirements of Section 9a, Act No. 318, Public Acts of 1947.

Theodore J. Richter, Circuit Judge.

A True Copy.

Edgar M. Branigin, Clerk, by H. Shedd, Deputy Clerk.

[fol. 68] IN CIRCUIT COURT OF WAYNE COUNTY

MOTION TO MODIFY ORDER GRANTING TEMPORARY INJUNCTION—Filed June 29, 1948

Now comes Eugene F. Black, Attorney General of Michigan, one of the parties defendant in the above cause, and moves the Court to modify its Order of May 27, 1948,

granting a Temporary Injunction in the above cause for the following reasons:

1. That the said Order as signed and filed is too broad in its scope and exceeds the powers and jurisdiction of the Court and was, therefore, inadvertently entered in its present form;

2. That the said Order Granting Temporary Injunction is not limited in its language and scope as it should be to the non-prosecution of the plaintiffs in said cause in the particular controversy before the Court, which is the only matter upon which the Court has jurisdiction to act;

3. That the effect of said Order as entered is to practically nullify the powers of the State of Michigan and its duly authorized Agencies in all labor controversies, some of which have arisen since the date of said Order and others of which may arise in the immediate future, and said Order is therefore entirely beyond the powers and jurisdiction of this Court.

Petitioner Therefore Prays that the present Order in the above cause dated May 27, 1948, granting Temporary Injunction, be modified to conform to the powers and jurisdiction of the Court by restricting the language and [fol. 69] scope of said Order to the parties and the controversy now before said Court.

Eugene F. Black, Attorney General of Michigan, One of the Defendants in said cause, by Ben H. Cole, Assistant Attorney General.

Dated: June 28, 1948.

In Circuit Court of Wayne County

Answer of Eugene F. Black, Attorney General of Michigan to Amended Bill of Complaint—Filed July 2, 1948

Eugene F. Black, Attorney General of Michigan, one of the defendants in the above entitled cause, for answer to the Amended Bill of Complaint says:

1. The defendant avers that he has no knowledge or information sufficient to form a belief as to the allegations in paragraph "1" that the Union there named is a voluntary association and is a Labor Union, and neither

admits nor denies the number of its members employed by the Chrysler Corporation in the County of Wayne, or as to the name by which said organization is known; neither admits nor denies the names or capacities of the officers thereof, or the capacity in which any officer appears in the Bill of Complaint, and neither admits nor denies that any officer appears in behalf of 1776 factory employees of said corporation, or that the said officer has been authorized in writing by said employees to sign [fol. 70] the Amended Bill of Complaint in this cause to prosecute this suit in their behalf, and neither admits nor denies the names or capacities or relationship of the Chrysler Corporation to other individuals named in said paragraph.

2. Defendant admits that James N. McNally is the duly elected and qualified Prosecuting Attorney for the County of Wayne, Michigan, and has the duty of conducting prosecutions for crime within the jurisdiction of the State in said County, but as to the duty of the Prosecutor to initiate prosecution defendant says that such alleged duty is a matter of law to be determined by the applicable statutes, and not by the assertion of the plaintiffs. Further answering said paragraph, defendant admits that he is the Attorney General of State of Michigan and authorized to intervene in any action, as stated in said paragraph.

3. Defendant neither admits nor denies the allegations in paragraph "3" as to the desires of the plaintiffs and avers lack of knowledge or information sufficient to form a belief as to such allegations, and denies the existence of rights alleged by plaintiffs to urge by speech and other forms of communication in said County that employees of the Chrysler Corporation shall go on strike and remain on strike without such strike being first approved as required by statute, until a collective bargaining agreement is reached concerning wages and compensation in respect to their labor, and state affirmatively that the admitted conduct of the plaintiffs in the assertion and exercise of such alleged rights is in direct violation of the statute referred to in said paragraph, and in direct violation of the laws of this State.

4. Defendant admits that the statute cited in paragraph "4" makes such a strike unlawful unless approved as [fol. 71] stated, and as to the balance of the paragraph states that the statute speaks for itself.

5. Defendant neither admits nor denies, but avers lack of knowledge or information sufficient to form a belief as to the existence of a dispute between the members of the U.A.W. and the Chrysler Corporation as alleged in said paragraph, and neither admits nor denies but avers lack of knowledge or information sufficient to form a belief that the State Board of Labor Mediation has exhausted efforts to mediate, and admits that under its duty provided by law and the said State Board of Labor Mediation did provide for an election concerning the right for said employees to strike, which provision for an election by said Board has been unlawfully ignored by said plaintiffs.

6. Defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies the allegation in paragraph "6" that about 10% of the employees of said corporation in the County of Wayne eligible to vote are non-members of said Union.

7. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the U.A.W. has upwards of 500,000 members employed in factories in the State of Michigan, and that upwards of 200,000 of such members are residents of the County of Wayne. Further answering said paragraph, defendant denies that said Union, its members or other plaintiffs individually and in association, have any right to urge strike action, instigate strikes, call strikes, and request the aid of others in such strike projects, free from the control of such matters, provided for in the statutes of the State of Michigan, and particularly the statute cited in said paragraph insofar as said statute makes unlawful and penalizes such activities.

[fol. 72] 8. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that subsequent to the demand for an election by the State Board of Mediation as set forth in paragraph "5" and while said election was pending under

the law, the plaintiffs urged that the employees of said Chrysler Corporation should go out on strike, and did cause a strike to be called pending said election, or that the officers of said U.A.W. called a strike pursuant to the urging and instigation of these plaintiffs, and admits that a strike was put into effect, but denies knowledge or information sufficient to form a belief, and neither admits nor denies the manner, method and instigation thereof. Further answering said paragraph, defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies that in the instigation, on calling and putting into effect said strike there participated substantially all of the U.A.W. members employed by said corporation.

9. Defendant avers lack of knowledge or information sufficient to form a belief, and therefore neither admits nor denies the specific application of any provisions of the so-called National Labor Management Act to the employer—employee relations of the plaintiffs with said corporation, and for the same reason neither admits nor denies that said corporation and plaintiffs are engaged in commerce within the meaning of said Act, and further states that this being a question of law further answer is unnecessary.

10. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the Chrysler Corporation operates plants in a number of states, and avers the same as to the [fol. 73] allegations as to the collective bargaining unit as alleged in said paragraph, and avers the same as to an alleged collective bargaining contract with said corporation.

11. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies that the requirements and conditions of the National Labor Management Act have been complied with in connection with the alleged existing wage dispute, and states the same as to written notice by the U.A.W. upon the corporation, and states the same as to the alleged offer to meet and confer with said corporation for the purpose of negotiating, and states the same as to its alleged notice to the Federal Mediation and Conciliation Service, and states the same as to continuance in full

force and effect of the terms and conditions of an alleged existing contract, and states the same as to the alleged notice upon the State Board of Labor Mediation as alleged in said paragraph.

12. Defendant admits that James N. McNally, Prosecuting Attorney of Wayne County, and this defendant, as Attorney General of the State of Michigan, have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws.

13. Defendant denies that Section 9(a) of Act. No. 318 of the Public Acts of 1947 is unconstitutional and denies the statement in sub-division (a) of said paragraph that said statute deprived the plaintiffs of the right to associate together for the purpose of mutual aid and assistance in strike action against their employers, and denies that said statute deprives the plaintiffs of due process of law contrary to Sec. 16 of Article II of the Constitution of Michigan, and the 14th Amendment to the Constitution of [fol. 74] the United States, and in contravention of Sec. 4, Article II of the Constitution of Michigan that said statute deprives the plaintiffs of the liberty of speech.

Answering sub-division (b), defendant admits that the statute in question provides for a majority vote of the persons in a collective bargaining unit in regard to strike action, and denies that such provision is not due process contrary to the Constitutions of the State and Nation.

Answering sub-division (c) of said paragraph, defendant denies that said statute deprives the plaintiffs of their right for liberty to contract, singly or collectively, concerning terms of employment, and denies that said employees are deprived of any constitutional rights as alleged.

Answering sub-division (d) of said paragraph, defendant denies that the provision for a majority vote impairs the right of representation and collective bargaining possessed by the U.A.W. and its locals; denies that it assumes to transfer these powers and rights to a majority in a collective bargaining unit, except as stated in said statute, and denies that said majority is empowered to take any action contrary to the Commerce Clause of the United States Constitution.

14. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies the allegation, that the U.A.W. brings this action in its own behalf, in behalf of its constituent locals, and its individual members.

15. Defendant denies that unless granted the relief prayed, the plaintiffs will suffer irreparable injury in respect to their constitutional rights; admits that if said plaintiffs or [fol. 75] others violate the laws of the State of Michigan they will be subjected to prosecution; denies that multiplicity of suits will occur, and denies that the alleged jeopardy constitutes a coercion, or any impairment of plaintiffs' constitutional rights of freedom of speech, freedom of association, and freedom to take strike action in concert with others for proper and lawful objects, not only in the present dispute but in all future bargaining affecting U.A.W. members, and denies that plaintiffs are without adequate remedy save in a court of equity. Further answering said paragraph, defendant says that all of the alleged rights of the plaintiffs are fully and adequately protected by the existing statute complained of, and that no lawful conduct on the part of the plaintiffs or any other person is the subject of past, present, or future threats by either of the defendants to this cause.

Eugene F. Black, Attorney General of Michigan; by
Ben H. Cole, Assistant Attorney General.

Dated: July 2, 1948.

Duly sworn to by Ben H. Cole. Jurat omitted in printing.

[fol. 76] In Circuit Court of Wayne County

Answer of Defendant James N. McNally—Filed July 2, 1948

Now comes defendant James N. McNally in the above entitled cause and makes answer to plaintiffs' bill of complaint and says:

1. The defendant not having personal knowledge of the matters set forth in paragraph one of plaintiffs' bill of complaint, neither admits nor denies the same but leaves plaintiffs to their proofs.

2. In answer to paragraph two, defendant admits that he is Prosecuting Attorney for the County of Wayne, State of Michigan, and in further answer to said paragraph says that his duties as such are prescribed by the statutes of the State of Michigan and defendant James N. McNally admits the allegations in paragraph two in reference to Eugene F. Black, Attorney General of the State of Michigan.

3. The defendant not having personal knowledge of the "desires" of the plaintiffs, as alleged in the first sentence of paragraph three, neither admits nor denies the allega-
[fol. 77] tions therein set forth. In answer to the remainder of said paragraph three, the defendant denies the same.

4. The defendant admits the substance of paragraph four. However, in further answer to said paragraph states that the statutes of the State of Michigan speak for themselves.

5. The defendant not having personal knowledge of the matters set forth in paragraph five, neither admits nor denies the same but leaves plaintiffs to their proofs.

6. The defendant not having personal knowledge of the matters set forth in paragraph six, neither admits nor denies the same but leaves plaintiffs to their proofs.

7. The defendant not having personal knowledge of the matters alleged in the first sentence of paragraph seven, neither admits nor denies the same but leaves plaintiffs to their proofs. The defendant denies the rights claimed by the plaintiffs asserted in the remainder of said paragraph seven, which are in violation of the statutes of the State of Michigan.

8. The defendant not having personal knowledge of the matters set forth in paragraph eight, neither admits nor denies the same but leaves plaintiffs to their proofs.

9. The defendant not having personal knowledge of the matters set forth in paragraph nine, neither admits nor denies the same but leaves plaintiffs to their proofs.

10. The defendant not having personal knowledge of the matters set forth in paragraph ten, neither admits nor denies the same but leaves plaintiffs to their proofs.

11. The defendant not having personal knowledge of the matters set forth in paragraph eleven, neither admits nor denies the same but leaves plaintiffs to their proofs.

[fol. 78] 12. In answer to paragraph twelve, the defendant James N. McNally admits that he will prosecute all persons who in said county violate the penal provisions of Act No. 314 of the Michigan Public Acts, 1947.

13. The defendant denies paragraph thirteen and each and every sub paragraph thereunder.

14. The defendant not having personal knowledge of the matters set forth in paragraph fourteen, neither admits nor denies the same but leaves plaintiffs to their proofs.

15. The defendant denies the allegations contained in paragraph fifteen.

George A. Gray.

Duly sworn to by George A. Gray. Jurat omitted in printing.

[fol. 79] In Circuit Court of Wayne County

Stipulation to Advance—Filed July 6, 1948

On behalf of all of the parties to said cause, the undersigned, their respective attorneys, hereby stipulate that said cause may be advanced for immediate hearing.

Rothe and Zwerdling, Harold Goodman, Attorneys for Plaintiffs.

James N. McNally, Eugene Black, Attorneys for Defendants.

Dated: July 6, 1948.

In Circuit Court of Wayne County

Order to Advance—Filed July 6, 1948

This cause coming on to be heard on motion of (plaintiff) (defendant) to advance.

It is ordered that the said motion be and the same is hereby (granted) and said cause be placed on the Chancery Pre-trial and reference docket.

(Signed) I. W. Jayne, Presiding Circuit Judge.

Filed July 6, 1948, Edgar M. Branigin, Clerk. By (Signed) Demcheck.

[fol. 80] In Circuit Court of Wayne County

Motion for Leave to File Supplemental Bill of Complaint—Filed July 19, 1948

Now come the plaintiffs by counsel and move that leave be granted to file a Supplemental Bill of Complaint by adding Paragraphs 16, 17, and 18 to the Amended and Supplemental Bill of Complaint, as herewith proffered, and to join as parties plaintiffs Michael Lacey and Blaine Marrin.

This motion is based upon the pleadings in said cause and the Supplemental Bill of Complaint herewith proffered.

Rothe & Zwerdling, Attorneys for Plaintiffs. Harold Goodman, of Counsel.

Dated: July 16, 1948.

In Circuit Court of Wayne County

Order Allowing Filing of Supplemental Bill of Complaint—Filed July 19, 1948

At a session of said Court held in the County Building in the City of Detroit, this 19th day of July, 1948, Present: The Honorable Theodore J. Richter, Circuit Judge.

The plaintiffs' Motion to File a Supplemental Bill of Complaint and to add additional parties plaintiffs having

been made in open Court in the course of hearing, and the same having been duly heard,

It is ordered that said proffered Supplemental Bill of Complaint may be filed, and Michael Lacey, Harry Southwell and Blaine Marrin may be joined as parties plaintiffs.

[fol. 81] It is further ordered that the defendants shall have a reasonable time to answer.

Theodore J. Richter, Circuit Judge.

(A true copy.)

Edgar M. Branigin, Clerk, by Dan Wojcik, Deputy Clerk.

In Circuit Court of Wayne County

Supplemental Bill of Complaint—Filed July 19, 1948

The plaintiffs, for the purpose of bringing before the Court matters in connection with their Bill of Complaint and related thereto occurring subsequent to the filing thereof, hereby supplement the allegations of the Amended and Supplemental Bill of Complaint by adding the paragraphs as follows:

16. There have arisen in said County wage disputes involving Gray—Marine Motor Co., Warner Aircraft Corporation, Champion Spark Plug Co., Timken Detroit Axle Co. and about 100 tool and die shops. It is impractical and unnecessary to enumerate specifically each one but two are here specifically set forth as typical of the facts in respect to all, to-wit, Robbins and England, and Vinco Corporation. Said concerns are engaged in interstate commerce and they and their employees are subject to the National Labor Management Relations Act. The employees of said plants are members of the U.A.W. In said plants, the plaintiffs, Emil Mazey, Norman Matthews, Michael Lacey, Harry Southwell and Blaine Marrin called strikes now in effect and unsettled while an election pursuant to Sec. 9 of Act 318 P. A. 1947 was pending.

17. Michael Lacey, Harry Southwell and Blaine Marrin hereby join in this suit as parties plaintiffs, adopt in [fol. 82] their behalf all of the allegations of the Amended and Supplemental Bill of Complaint.

18. The plaintiffs fairly and adequately represent a class too numerous to bring before the Court and this class includes the members of the U.A.W. and employees in the State of Michigan and County of Wayne generally who may be engaged in occupations affecting interstate commerce. The threatened enforcement of the election requirements of Act 318 P. A. 1947 applies to all such employees in said County at all times; and the plaintiffs and great numbers of U.A.W. members will continue to call and instigate strikes without first complying with the election requirements of said Act 318 Public Acts of 1947 in good faith belief that said provisions are void.

The International Union of United Automobile, Aircraft and Agricultural Implement Workers of America; C. I. O. Emil Mazey, Secretary, Treasurer, and Acting President. Emil Mazey, individually, and in behalf of 1776 employees of Chrysler Corporation and the members of the U.A.W. Michael Lacey, Blaine Marrin, Harry Southwell, Norman Matthews, Arthur Grudzen, Alex Barbour, [fol. 83] Wilson Kuck, Ralph Fileccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer. Rothe & Zwerdling, Attorneys for Plaintiffs. Harold Goodman, Of Counsel, 526 Dime Building, Detroit 26, Michigan.

State of Michigan,
County of Wayne, ss:

On this 16th day of July, 1948, personally appeared before me the above named Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Fileccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, Harry Southwell, Michael Lacey and Blaine Marrin and William T. Archer, who being duly sworn, depose and say that they have read the foregoing Amended and Supplemental Bill of Complaint by them subscribed, know the contents thereof, and that the same are true, except as to those matters alleged to be upon information and belief, and these they believe to be true. Further deposes the said Emil Mazey that he is Secretary, Treasurer, and Acting President of the said International Union of United Automobile, Aircraft, and

Agricultural Implement Workers of America, C.I.O., and [fol. 84] is authorized to sign this Amended and Supplemental Bill of Complaint in behalf of said Union, and that he is specially authorized to prosecute this action on behalf of 4,776 Chrysler employees.

William Mazey, Notary Public, Wayne County, Michigan.

My Commission expires 10-29-50.

In Circuit Court of Wayne County

Answer of Eugene F. Black, Attorney General of the State of Michigan, One of the Defendants in the Above Cause, to Supplemental Bill of Complaint — Filed August 5, 1948

The Defendant, Eugene F. Black, Attorney General of the State of Michigan, reserving the benefit of his objection to the Order of the Court allowing the filing of a Supplemental Bill of Complaint, which objection was made in open court upon the hearing of Plaintiffs' Motion for Leave to File Supplemental Bill of Complaint, for answer to said Supplemental Bill of Complaint says:

16. The Defendant avers that he has no knowledge or information sufficient to form a belief and therefore neither admits nor denies that wage disputes have arisen in said County involving Gray-Marine Motor Co., Warner Aircraft Corporation, Champion Spark Plug Co., Timken-Detroit Axle Company, and about 100 tool and die shops. For the same reason Defendant neither admits nor denies the practicality or necessity of enumerating such disputes, and for the same reason neither admits nor denies that Robbins and England, and Vinco Corporation are typical of the facts in respect to all of such disputes. Defendant, for the same reason, neither admits nor denies that said con- [fol. 85] cerns are engaged in interstate commerce and neither admits nor denies that they and their employees are subject to the National Labor Management Relations Act. Defendant, for the same reason, neither admits nor denies that the employees of said plants are members of the U.A.W. Defendant admits, upon information and belief,

that the Plaintiffs, Emil Mazey, Norman Matthews, Michael Lacey and Blaine Marrin, called strikes while an election was pending pursuant to Sec. 9 of Act 318, P.A. 1947.

17. Defendant avers, lack of knowledge or information sufficient to form a belief as to the desires of the individuals named in said paragraph 17, and neither admits nor denies, for the same reason, their capacity to join this suit as parties plaintiff.

18. Defendant avers that he has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies the claim that the Plaintiffs represent a class, including members of the U.A.W. or employees in the State of Michigan engaged in occupations affecting interstate commerce. As to the balance said paragraph no statement of fact is made requiring answer.

Eugene F. Black, Attorney General of Michigan. By Ben H. Cole, Assistant Attorney General.

Dated: August 3, 1948.

[fol. 86] In Circuit Court of Wayne County

Answer of James N. McNally to Plaintiffs' Second Supplemental Bill of Complaint—Filed August 24, 1948

Now comes James N. McNally and makes answer to plaintiffs' second supplemental bill of complaint, however saving and reserving to himself all of his objections to the propriety of the procedure allowing the filing of said supplemental bill of complaint, and says:

The defendant James N. McNally, not being informed as to the matters set forth in Paragraphs 16, 17, and 18 of plaintiffs' second supplemental bill of complaint, neither admits nor denies the same but leaves plaintiffs to their proofs.

James N. McNally, Prosecuting Attorney of Wayne County, by (Signed) J. Lynn Fewlass, Assistant Prosecuting Attorney.

Dated: July 17, 1948.

In Circuit Court of Wayne County

Opinion of the Court—Filed August 3, 1948

The plaintiffs, the International Union of Automobile, Aircraft and Agricultural Implement Workers, C.I.O., generally known as the U.A.W., C.I.O., Emil Mazey, its acting President, for himself, the Union members, and for 1776 Chrysler employees, together with other Union officers, and other industrial employees who were leaders in recent strikes, bring this bill in equity to restrain the Prosecuting Attorney of Wayne County, and the Attorney General, [fol. 87] who appeared by intervention, from taking criminal proceedings against the members of the U.A.W., C.I.O., based upon alleged violations of those provisions of Act 318, P. A. 1947, which declared unlawful strikes instituted without first securing approval by a majority of the employees in the State in the collective bargaining unit of the plant involved in an election held in accordance with the statute and which subject to criminal penalties persons who call or instigate a strike while the election is pending. The statute also provides for the civil remedies of injunction and damages on account of strikes so made unlawful.

The case was fully tried, and exhaustive and able briefs were filed.

On the part of the plaintiffs it is claimed that their rights of liberty and property are impaired contrary to Sections 4 and 16, Article II of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and that the provisions complained of are repugnant to the collective bargaining rights granted to the unions under the Taft-Hartley Act and to the prescriptions of that law in support of these rights.

The evidence shows that there have been and will be numerous violations of the election requirements of Act 318 P. A. 1947 on the part of the plaintiffs and U.A.W. members, and by the very terms of the Statute it would seem that prosecutions can be, and if the statute is valid, should be sufficiently vigorous and extensive to prevent a strike not authorized by the statute. Consequently, the plaintiffs may complain not merely of a specific instance in which their rights may be impinged, but "of the pervasive threat [fol. 88] inherent in its (the statutes) existence." Thorn-

hill v. Alabama, 310 U. S. 88, 97. Obedience to the statute involves the continuous sacrifice of the rights claimed. In this situation the jurisdiction of equity to determine the validity of this law is peculiarly applicable, for if it is invalid it involves a continuous impairment of the right to associate in common action to withhold labor as a means of obtaining a better wage bargain. The rights involved are of equal dignity with those to conduct a business. Against the serious claim that the statute on its face impairs fundamental civil rights, a determination of that claim by a court of equity is most appropriate.

The defendants in their briefs contend only that the right to strike is not absolute, but may be subjected to limitation. But the briefs submitted in their behalf are noteworthy, in that they disclose no case which approves the qualification in question here. On the other hand, counsel for the plaintiffs narrow their claims down to the specific limitation here involved. They insist that there is not involved the power of the state to qualify the right to strike for a purpose which might be made unlawful, or in a business coupled with a public interest, nor in the face of some public emergency. Other sections of the statute deal with hospitals and public utilities and provide for compulsory arbitration of wage disputes in such cases. There is in question here the sweeping terms of the statute requiring a majority vote in the bargaining unit as a condition to the lawfulness of a strike in ordinary industry. The statute applies to all strikes without distinction as to purpose and to all occasions without regard to emergency. The question is whether the right to strike for any group of employees may be made subject to the approval of a majority of the employees in the collective bargaining unit.

[fol. 89] This question, I am persuaded, must be answered "No." It is not inherently reasonable that the right should exist with majority approval and be denied without it. So long as wage determination is a matter of bargaining between employers and employees, it is unreasonable to prevent by coercion of law any work stoppage by two or more employees acting in concert if they are dissatisfied with the conditions of employment. The right of a working man to induce his fellow employee to quit work with him for proper purposes is individual. He can scarcely be deprived of this right in all cases where he or others fail to

persuade a majority to act with them. In Beck v. Teamsters Protective Union, 118 Mich. 497, the Court stated:

> "So, also, the laborers have the right to fix a price upon their labor and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization or to refuse to work, except for an established wage."

That these rights are within the scope of constitutional protection is well expounded by the Supreme Court of Alabama in Hotel and Restaurant Employees Alliance v. Greenwood, 249 Ala. 265, 30 So. 2d 696. The numerous authorities therein cited rendered it unnecessary to repeat them here. The point is forcefully made that freedom of speech in respect to labor disputes is bound up with the necessary implication of freedom to carry into action what is urged.

> [fol. 90] "It would be but a hollow principle to say a union is free to advertise a labor dispute by picketing but may not strike to enforce its demands. Scofes v. Helmer, 205 Ind. 596, 187 N. E. 662, 664."

Freedom of speech includes the right to induce others not to buy merchandise or perform services. Carlson v. California, 310 U. S. 106, 112.

In Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810, statutory provisions comparable with those in question here was held unconstitutional, and a three judge United States District Court held sections of the 1943 Kansas Labor Law substantially identical with the provisions here involved, to be unconstitutional. Stapleton v. Mitchell, 60 Fed. Suppl. 51. The Oregon Supreme Court held to be unconstitutional a law restraining picketing unless authorized by a majority of the employees in American Federation of Labor v. Bain, 165 Ore. 193, 206.

These decisions, which appear in no manner contradicted or qualified by others, impel me to hold that so much of Act 318 Public Acts of 1947 which require a strike vote and penalize the calling or instigating strikes while an election is pending are void as contravening the due process clauses of the State and Federal Constitutions.

It has been strongly urged that these provisions are repugnant to the Labor Management Relations Act. (Pub. L. No. 101, 80th Cong. 1st Sess.) generally known as the Taft-Hartley Act. While the states retain their fundamental police powers in matters of local concern even in the face of Federal Legislation dealing with matters affecting commerce, this legislation qualifies the collective bargaining [fol. 91] provisions of the federal Act in two important ways. The collective bargaining unit under the federal Act may extend to and include plants of a single industry in more than one state. Thus the collective bargaining under federal prescription is affected by an affirmative or negative strike vote in Michigan. Furthermore, the federal Act grants collective bargaining rights. Sec. 9(a) provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is impossible to dissociate the strike from the process of collective bargaining.

The question of representation of the bargaining unit by the majority and the procedure conferring bargaining rights are all matters covered by this law, and any revocation of authority must be left to the Congress. The State cannot interfere with the representation policies provided by the Taft-Hartley Act.

A decree in accordance with this opinion, declaring unconstitutional the election requirements of the Bonine Tripp Act and enjoining the defendants from enforcing criminally [fol. 92] a violation thereof in respect to the plaintiffs may be prepared and submitted.

Theodore J. Richter, Circuit Judge.

Dated: August 2, 1948.

A True Copy, Edgar M. Branigin, Clerk; By Don Wojcik, Deputy Clerk.

IN CIRCUIT COURT OF WAYNE COUNTY

DECREE—Filed August 11, 1948

At a session of said Court held in the County Building in the City of Detroit, this 11th day of August, A. D., 1948. Present: The Honorable Theodore J. Richter, Circuit Judge.

This cause having come on to be heard upon the Bill of Complaint, Amended and Supplemental, and the Answers thereto and the Court having been fully advised in the premises, and it appearing that Section 22 of Act 318 Public Acts of 1947 subjects to criminal penalties any person who either individually or as one of a group of persons instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9; and Sections 9, 9a, and 9b require with respect to ordinary industrial enterprises not hospitals or public utilities the holding of an election for the purpose of taking a strike vote of the employees in the collective bargaining unit of the industries defined in said statute, and prohibit and make un- [fol. 93] lawful any strike unless in such strike vote the same shall be approved by the majority of the employees in said collective bargaining unit and said strikes not so approved may be the subject of legal and equitable remedies as provided in Section 22a; and the Court having filed a written opinion determining the material facts and the applicable law; and that the rights and protection sought by the plaintiffs are in respect to subjects of collective bargaining, wages and conditions of employment and election requirements in the settlement of jurisdictional disputes pursuant to Section 9c are not involved; for the reasons in said opinion stated, upon motion of Rothe and Zwerdling, Harold Goodman of Counsel, attorneys for plaintiffs,

It is ordered adjudged, and decreed, as follows:

1. That the provisions of Act 318 Public Acts of 1947 requiring the taking of a strike vote and making a strike unlawful unless the same shall first be approved by a majority vote in the collective bargaining unit, and subjecting to criminal prosecution any person who either individually or as one of a group instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9 of said Act, except insofar as the said provisions are or may be applied in respect to jurisdictional strikes as provided in Section 9c, are null

and void as in contravention of Art. II, Secs. 4 and 16 of the Constitution of the State of Michigan, of the 14th Amendment of the United States Constitution, and in application to any industry affecting interstate commerce, (in view of the National Labor Management Relations Act) of Art. I, Sec. 8 (3) of the Constitution of the United States.

2. That the defendant, James N. McNally, as Prosecuting Attorney of said County, and Eugene F. Black, as [fol. 94] Attorney General of the State of Michigan, be and they hereby are perpetually enjoined from prosecuting in said County of Wayne the plaintiffs, their officers, agents, and members for any alleged violations of the provisions of Act 318 Public Acts of 1947 declared unconstitutional in Paragraph 1 hereof.

3. Nothing herein contained shall prejudice or prejudge the application of Act 318 Public Acts of 1947 to hospitals or public utilities or jurisdictional strikes nor shall any part or clause of said Act other than those within the scope of Paragraph 1 hereof be considered as in any manner affected by this decree.

Theodore J. Richter, Circuit Judge.

A True Copy, Edgar M. Branigin, Clerk; By Don Wojcik, Deputy Clerk.

In Circuit Court of Wayne County

Notice of Entry of Decree and Proof of Service—Filed August 12, 1948

To: Eugene F. Black, Attorney General of Michigan, and Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Building, Detroit 26, Michigan, —and—

[fol. 95] To: James N. McNally, Prosecuting Attorney, J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, 508 Wayne County Building, Detroit 26, Michigan.

Please Take Notice that the Decree in the above entitled cause was entered this 11th day of August, 1948.

Yours, etc., Rothe & Zwerdling, Attorneys for Plaintiffs; Harold Goodman, Of Counsel.

Dated: August 11, 1948.

In Circuit Court of Wayne County

Order Extending Time to Settle Case on Appeal—Filed August 31, 1948

At a session of the Court, held at the Court House in the city of Detroit, on the 31st day of August, A. D. 1948.

Present: Honorable Theodore J. Richter, Circuit Judge.

Upon the filing of the within Stipulation and the court being fully advised in the premises:

It Is Ordered that the time to settle the record on appeal in the above cause be and the same is hereby extended to September 2nd, 1948.

Theodore J. Richter, Circuit Judge.

[fol. 96] In Circuit Court of Wayne County

Claim of Appeal—Filed August 11, 1948

Defendant, Eugene F. Black, Attorney General of the State of Michigan, hereby claims an appeal from the Decree entered in said cause on August 11, 1948, by the Circuit Court for the County of Wayne, In Chancery, Honorable Theodore J. Richter, presiding.

Appellant takes general appeal.

Eugene F. Black, Attorney General of Michigan, By Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Bldg., Detroit 26, Michigan, Woodward 2-5083.

Dated: August 11, 1948.

In Circuit Court of Wayne County

Certificate of Court Reporter—Filed August 23, 1948

I hereby certify that a transcript of the testimony taken in the above entitled cause has been ordered by J. Lynn Fewlass, Esq., attorney for defendant James N. McNally; that payment for same has been secured, and that same will be furnished as soon as possible.

Leonard C. Aumann, Official Reporter, Wayne Circuit Court.

Dated at Detroit, Michigan, August 4, 1948.

[fol. 97] In Circuit Court of Wayne County

Claim of Appeal to the Supreme Court of Michigan
Filed August 23, 1948

James N. McNally, Prosecuting Attorney for the County of Wayne, one of the defendants in the above entitled cause, hereby claims an appeal from the decree of the Circuit Court for the County of Wayne in Chancery, (Hon. Theodore J. Richter, Trial Judge) as filed and entered in this cause on August 11, 1948.

This defendant and appellant takes a General Appeal.

James N. McNally, Prosecuting Attorney for County In Propria persona; J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys; Attorneys for Defendant and Appellant James N. McNally; By J. Lynn Fewlass, Business address: 508 Wayne County Bldg., Detroit 26, Michigan.

Dated: August 23, 1948.

[fol. 98] In Circuit Court of Wayne County

Notice of Presentation and Settlement of Settled Case on Appeal—Filed September 2, 1948

To: Rothe & Zwerdling, 3635 Barlum Tower, Detroit 26, Michigan; Harold Goodman, 526 Dime Building, Detroit 26, Michigan, Attorneys for Plaintiffs and Appellees, and Ben H. Cole, Assistant Attorney General, 1900 Cadillac Square Building, Detroit 26, Michigan, Attorney for Defendant and Appellant Eugene P. Black.

Take Notice that the annexed proposed Settled Case on Appeal, with Reasons and Grounds for Appeal of Defendant McNally attached thereto, will be presented for disposition and settlement to the Trial Judge, Honorable Theodore J. Richter, in his courtroom in the Wayne County Building, City of Detroit, Michigan, on the 31st day of August, 1948, at 9:00 o'clock, A. M., on said day, or as soon thereafter as counsel may be heard.

Dated: August 27th, 1948.

James N. McNally, Wayne County Prosecuting At-
[fol. 99] torney, In Propria Persona and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant and Appellant McNally, By J. Lynn Fewlass.

In Circuit Court of Wayne County

Stipulation for Extension of Time to Settle Record
Filed August 31, 1948

It Is Hereby Stipulated by and between the attorneys of record for the parties in the above entitled cause, that the time for settling record be and the same is hereby extended to September 8, 1948.

Dated: Detroit, Michigan, August 27, 1948.

Rothe & Zwerdling, Attorneys for Plaintiff; Harold Goodman, Of Counsel for Plaintiff, By Harold Goodman. James N. McNally, By Philip A. McHugh, Assistant Prosecuting Attorney. Eugene F. Black, Attorney General, By Ben H. Cole, Assistant Attorney General.

[fol. 100] In Circuit Court of Wayne County

Defendants' Reasons and Grounds for Appeal

Now comes James N. McNally, Prosecuting Attorney for Wayne County, in propria persona, and by J. Lynn Fewlass and Julius C. Pliskow, Assistant Prosecuting Attorneys, and claims the following reasons and grounds for appeal:

1. The court erred in not granting the motion of defendant James N. McNally to dismiss plaintiffs' bill of complaint for the reasons set forth therein.

2. The court erred in granting leave to plaintiffs to file in this cause on May 29, 1948, an Amended and Supplemental Bill of Complaint and to file on July 19, 1948, a Second Supplemental Bill of Complaint.

3. The court erred in entertaining plaintiffs' bill and supplemental bills in equity to enjoin the prosecution of criminal proceedings. (Findings and Opinion, p. 1, par. 2 and 3; p. 2, par. 3).

4. The court erred in not holding that plaintiffs have a full, adequate and complete remedy at law.

5. The court erred in holding (Opinion, p. 3, par. 1 and 2) that the right to strike for any group of employees may not be made subject to the approval of a majority of the

employees in the collective bargaining unit, as provided in Section 9a of the Bonine-Tripp Act, (Act No. 318, P. A. 1947, amending the Michigan Labor Mediation Act; Act No. 176, P. A. 1939; 13 MSA 17.454, 1947 Cum. Supps., p. 222).

6. The court in holding (Opinion, p. 4 and 5) that so much of Act. No. 318, P. A. 1947 as requires a majority strike [fol. 101] vote and penalizes the calling or instigating of strikes while an election is pending, (Sections 9, 9a, 9b and Section 22) are void as contravening the due process clauses of the State and Federal constitutions, and comprise a violation of the full freedom rights to speech and due process of law, guaranteed to individuals under Article II, Sections 4 and 16 of the Michigan Constitution (1908), and the Fourteenth Amendment of the United States Constitution, and comprise a violation, likewise, of the Commerce Clause of the United States Constitution. (Article I, Sec. 8 (3)).

7. The court erred in holding (Opinion, p. 5) that the above cited provisions of Act No. 318, P. A. 1947 are repugnant to the National Labor Relations Management Act, 1947, (29 U.S.C.A., 141, et seq.; Chap. 120, Public Law 101) generally known as the Taft-Hartley Act.

8. The court erred in holding (Opinion, p. 5) that the collective bargaining unit under the Federal Act is invaded by an affirmative or negative strike vote in Michigan under the Bonine-Tripp Act, Act. No. 318, P. A. 1947.

9. The court erred in not holding that the Michigan Act (Act No. 318, P. A. 1947) comprises a valid constitutional exercise of the State's police power in the field of labor relations.

10. The court erred in not holding that it will not be lightly inferred or assumed that Congress, by the mere passage of an act, has impaired the sovereignty of the states over police matters.

11. The court erred in not holding that under the State's rights as to police power, the Legislature was within its [fol. 102] rights in passing the Bonine-Tripp Act (Act No. 318, P. A. 1947) as an expression of the will of the people on questions of public concern and responsive to local social needs.

12. The court erred in holding, (Opinion, p. 5) that the exercise of bargaining rights is controlled by the Federal law, and that this control cannot be impaired or modified by the states, and in further holding (Opinion, p. 5) that it is impossible to disassociate the strike from the process of collective bargaining.

13. The court erred in not holding that the individual states have the right within the valid exercise of the police power to define use of the union labor's power in calling a strike a crime under prescribed circumstances, and that such restriction upon the power is not a violation of constitutional liberty guaranteed by either the leader or those who desire him to exercise the power.

14. The court erred in not holding that the requirement of the Bonine-Tripp Act (Act No. 318, P. A. 1947, Sec. 9a; 12 M.S.A., Sec. 17.454(10)) of a majority strike vote is a reasonable exercise of the State's police power, due to the injustice comprised in a small fraction of the employees, by voting to strike, causing work stoppage for hundreds of thousands who did not wish to strike. (House of Representatives Report, 245, page 22, April 11, 1947; also, Ludwig Teller on "The Law Governing Labor Disputes and Collective Bargaining," Introduction, Special Supps., 1947).

15. The court erred in not holding that the legislative object embodied in the Bonine-Tripp Act (Act No. 318, P. A. 1947) is reasonable, and that its provisions are in no respect arbitrary, and that the means selected, —majority vote by secret ballot—bear a real and substantial relation [fol. 103] to the object sought to be attained, in fulfillment of the law.

16. The court erred in not holding that a union presumably represents all the employees in the bargaining unit, and that under the law of agency the principal can restrict and control the authority of his agent, and that the State, within its inherent police power, can define and prescribe regulations for the protection of multiple principals, to insure that the union and its officers, as agent, shall be amenable to the collective direction and control of the principal, the employees.

17. The court erred in regarding and holding (Opinion, p. 4) the identification of picketing and strikes with free

speech, and the integration of economic coercion with the fundamental liberty and freedoms protected by the State and Federal constitutions.

18. The court erred in not holding in the case at bar that there exists no conflict between the State Act (Act No. 318, P. A. 1947) and the Federal Act (Taft Hartley Act; the National Labor Management Relations Act, 1947; Chapter 120, public Law 101; 80th Congress, First Session).

19. The court erred in not holding that Congress, in passing the National Labor Management Relations Act, did not expressly or impliedly manifest intent to destroy or exclude State legislation from the phase of labor relations affecting commerce covered by the State act, and that there is no express foreclosure, in the National Labor Management Relations Act, of the State requirement of a strike vote.

20. The court erred in not holding that the traditional right of states to enact police power legislation is invio- [fol. 104] late, unless the intent of Congress to curtail such right is unmistakably clear and manifest, and that it was not the intention of Congress, in enacting the Taft-Hartley Act to interfere with the states in the enactment and administration of their own laws.

21. The court erred in not holding that the strike-vote requirement of the Bonine-Tripp Act (Sec. 9a; 12 M.S.A., Sec. 17. 454(10)) does not infringe upon or conflict with any federally protected right, since no federal protection has been either expressly or impliedly provided in the National Labor Management Relations Act, for the claimed and alleged right of a union officer to instigate and call a strike without the consent of the majority of members of the bargaining unit.

James N. McNally, Prosecuting Attorney for Wayne County, In Propria Persona, and by J. Lynn Fewlass & Julius C. Pliskow, Assistant Prosecuting Attorneys, Attorneys for Defendant & Appellant, McNally, By (Signed) J. Lynn Fewlass

[fol. 105] In Circuit Court of Wayne County

Reasons and Grounds for Appeal in Behalf of Defendant Eugene F. Black

Now Comes Eugene F. Black, Attorney General of the State of Michigan, one of the defendants and appellants in the above entitled cause, by Ben H. Cole, Assistant Attorney General, and for his reasons and grounds for appeal says that there is manifest error in the record and proceedings as follows:

1. The court erred in holding that the right of a group of employees in ordinary industry to strike may not legally be made subject by State Law to a majority vote of such employees in a collective bargaining unit as determined by such law. (Act 176, Pub. Acts 1939, as am. by Act 318, Pub. Acts 1947.)

2. The court erred in holding that the provisions of the Labor Mediation Act, as amended, which require a strike vote and penalize the calling or instigating of a strike while such election is pending are void as in contravention of the due process clauses of the State and Federal Constitutions. (U. S. Const. am. 14; Mich. Const. 1908, Art. II, Sec. 16.)

3. The court erred in holding that the strike vote and penal provisions of the Michigan Labor Mediation Act, Id., are void as in contravention of the freedom of speech provisions of the Federal and State Constitutions. (U. S. Const. am. 1, Mich. Const. 1908, Art. II, Sec. 4).

4. The court erred in holding the above provisions of the State Law to be in violation of the Commerce Clause of the Federal Constitution. (U. S. Const. Art. 1, Sec. 8(3)).

[fol. 106] 5. The court erred in holding that the exercise of collective bargaining rights is so controlled by federal law that such control is jurisdictionally exclusive of the exercise of the police powers of the states.

Eugene F. Black, Attorney General of Michigan, Defendant and Appellant; By Ben H. Cole, Assistant Attorney General.

(A True Copy.)

Following the conclusion of the trial and the submission of briefs by counsel for the respective parties hereto, a written Opinion was thereafter, on the 3rd day of August, 1948, filed in this cause by the Trial Judge, Honorable Theodore

J. Richter, after which a Decree, pursuant to the said Opinion, was signed, filed and entered herein on August 11, 1948.

[fol. 107] In Circuit Court of Wayne County

Certificate of the Court

And because the within and foregoing matters and things do not appear of record in this cause, I, the Circuit Judge before whom said case was tried, in pursuance of the statute and rules in such made and provided, and in pursuance of order entered in said cause extending the time to September 15, 1948, in which to present and have settled a Settled Case herein on appeal, Do Hereby Certify that the within and foregoing contains the substance of all the testimony in said cause, and that I have deemed it necessary to a full understanding of said testimony that it be set out by questions and answers to the extent to which the same has been done herein; and that the Reasons and Grounds for Appeal were annexed to said Settled Case at the time the same was signed and certified by me.

Dated: September 2nd, 1948.

(Signed) Theodore J. Richter, Circuit Judge.

O. K.,

(Signed) Harold Goodman, of Counsel for Plaintiffs.

[fol. 108] In Circuit Court of Wayne County

Certificate of Court Supplementing Record on Appeal

Filed December 9, 1948

I, the Circuit Judge before whom said cause was tried, do hereby certify that Exhibit 4, a copy of which is hereto attached, was received in evidence in said cause, and the same is hereby included in the settled case on appeal.

Theodore J. Richter, Circuit Judge.

Dated at Detroit, Michigan, this 9th day of December, 1948.

Approved:

Harold Goodman, Attorney for Plaintiffs; Ben H. Cole, Assistant Attorney General, Philip A. McHugh, Asst. Prosecuting Attorney, Attorney for Defendant, James N. McNally.

Agreement

Between

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

— and —

Local Union No. 3 Local Union No. 7
Local Union No. 47 Local Union No. 51
Local Union No. 140 Local Union No. 227
Local Union No. 230 Local Union No. 371
Local Union No. 375 Local Union No. 490
Local Union No. 685 Local Union No. 705
Local Union No. 961



— AND —

CHRYSLER CORPORATION

dated

APRIL 26, 1947

History of Contract Relationship

Chrysler Corporation and International Union, UAW-CIO, first entered into a collective bargaining agreement in April, 1937. This agreement which covered Union members only was continued in effect until the fall of 1939 when the National Labor Relations Board issued a Certification designating the Union as representative of production and maintenance employees. On November 29, 1939, the Corporation and the Union entered into an agreement which covered all employees in the bargaining unit as determined by the National Labor Relations Board.

On December 10, 1940, and again on June 2, 1941, the Corporation and the Union entered into supplementary agreements to the agreement of November 29, 1939.

On September 10, 1943, the Corporation and the Union entered into a new agreement. This agreement was later amended by supplementary agreements dated November 30, 1944 and January 8, 1945.

On January 26, 1946, the Corporation and the Union incorporated amendments to the previous agreement and further amendments into a new agreement.

On April 26, 1947, the Corporation and the Union entered into the present agreement which is set forth in this booklet.

CHRYSLER CORP. 13

PRINTED IN U.S.A.

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Agreement Entered Into on the 26th Day of April, 1947

Between Chrysler Corporation

(Hereinafter referred to as the "Corporation")

and Local Union No. 7, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 3, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 140, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 47, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 227, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 490, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 51, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 375, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 230, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 371, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 705, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 685, United Automobile, Aircraft and Agricultural Implement Workers of America,

and Local Union No. 961, United Automobile, Aircraft and Agricultural Implement Workers of America,

and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America,

Affiliated with the Congress of Industrial Organizations.

(Said Local No. 7, and said Local No. 3, and said Local No. 140, and said Local No. 47, and said Local No. 227, and said Local No. 490, and said Local No. 51, and said Local No. 375, and said Local No. 230, and said Local No. 371, and said Local No. 705, and said Local No. 685, and said Local No. 961, and said International Union being hereinafter referred to collectively as the "Union.")

I

1. The National Labor Relations Board by Decisions and Certifications of Representatives having found that all the production and maintenance employees of the Corporation at the Chrysler Jefferson, Chrysler Kercheval, Dodge Main, Dodge Forge, Dodge Truck, De-Soto, Highland Park, Amplex-Harper, Plymouth, Evansville, Kokomo, Marysville, Los Angeles and New Castle Plants, excluding foremen, assistant foremen, timekeepers, plant protection employees, office employees, confidential salaried employees, and salaried engineers, and, in addition, excluding at the New Castle Plant only, the employees of Department No. 57 of that plant who are die sinkers or are employed in the manufacture or maintenance of dies used to complete forgings, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, and having certified that International Union, United Automobile Workers of America, affiliated with the C.I.O., now known as International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C.I.O., has been designated and selected by a majority of all the employees of the Corporation constituting said unit as their representative for the purposes of collective bargaining; and that pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the

C.I.O., is the exclusive representative of all the employees constituting said unit for the purpose of collective bargaining in respect to the rates of pay, wages, hours of employment, and other conditions of employment, and whereas almost all employees of the Lynch Road Plant were transferred to the Lynch Road Plant from other Chrysler Corporation Plants in which these employees were represented by the Union, the Corporation and the Union previously agreed that all production and maintenance employees of the Corporation at the Lynch Road Plant, excluding foremen, assistant foremen, timekeepers, plant protection employees, office employees, confidential salaried employees, and salaried engineers, constitute a part of the above stated appropriate unit; the Corporation, pursuant to the requirement of the National Labor Relations Act, and pursuant to the agreement between the Corporation and the Union for the Lynch Road Plant, recognizes International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O., as exclusive representative of the employees constituting such bargaining unit in accordance with said Decisions, Certifications, and prior agreement for the term of this agreement.

2. The Union recognizes that the Corporation has the exclusive right to manage its plants and direct its affairs and working forces.

3. The Union agrees that it will not for any purpose represent anyone in a supervisory capacity such as superintendents, general foremen, assistant general foremen, foremen or assistant foremen or other supervisors, or other representatives of management.

4. The Corporation will not aid, promote or finance any labor group or organization which purports to engage in collective bargaining or make any agreement with any such group or organization for the purpose of undermining the Union.

5. It is mutually agreed that the term "employee" for the purpose of this agreement shall not include foremen, assistant foremen, plant protection employees, office employees, confidential salaried employees, and salaried engineers.

6. The Union will not cause or permit its members to cause, nor will any member of the Union take part in, any sit-down, stay-in or slow-down in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the bargaining procedure as outlined in this agreement has been exhausted, and in no case until after the negotiations have continued for at least five days and not even then unless sanctioned by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America. In case a strike shall occur, either before or after all bargaining procedure has been exhausted, this agreement shall terminate at once. The Corporation reserves the right to discipline any employee taking part in any violation of this section of this agreement. The Union agrees that it will not oppose the dis-

charge or discipline of anyone who instigates, leads or induces another employee to take part in any unauthorized strike. The management will not cause or sanction a lockout until all the bargaining procedure as outlined in this agreement has been exhausted, and in no case until after negotiations have continued for at least five days.

II

Bargaining Procedure

1. The number of districts in each plant shall be the present number, unless the number is increased or decreased by agreement between the plant management and the Union. The plant management and the Union may redistrict a plant from time to time by agreement. In each district, employees in the district shall be represented by one Chief Steward for each shift who shall be a regular employee having seniority and working in the district.

It is understood and agreed that each Chief Steward has full time work to perform in the plant. It is understood and agreed that the Chief Steward will not leave his district during working hours. The foreman will grant permission to the Chief Steward to leave his work for the purpose of presenting grievances. The foreman also will grant permission to the Chief Steward to leave his work if the Chief Steward advises his foreman that a grievance or grievances have been referred to him by one or more of his constituents which require investigation before the grievance or grievances can be properly presented. In such case, the Chief Steward shall advise the foreman of the number and nature of grievances he wishes per-

mission to investigate, and after investigating them shall advise the foreman of those grievances he disposed of and present the remaining grievances to the foreman. If the Chief Steward goes into a department other than the one in which he works to investigate grievances, he will advise the foreman in that department of his presence and the number and nature of the grievances he wishes to investigate. After investigating them, the Chief Steward shall advise the foreman or the designated representative of management, the number and nature of the grievances that he disposed of and present the remaining grievances. If it is necessary for a Chief Steward to speak to an employee about a grievance, he will make arrangements with the employee's foreman to do so. Chief Stewards during their working hours, without loss of time or pay, may in accordance with the terms of this paragraph, perform their duties of conferring with foremen or other designated representatives of the plant management and of investigating grievances. The Corporation will provide a box at a suitable place in each district in which employees may deposit grievances which they wish the Chief Steward to present.

2. The Plant Shop Committee of the Union shall consist of not more than six members, each of whom shall be an employee of the plant having seniority or a regular employee of the plant having seniority who is on leave of absence. One member of the Plant Shop Committee shall be an employee on a skilled worker's classification job. It is understood and agreed that each member of the Plant Shop Committee of the Union who is a regular

employee of the plant has work to perform in the plant, and that he will not leave his work without first notifying his foreman and shall report to his foreman on his return. Members of the Plant Shop Committee, by agreement between the Plant management and the Plant Shop Committee, may have assigned to them certain districts in the plant and on proper occasions may go into those districts, but not into other districts of the plant assigned to other Plant Shop Committeemen. The foreman will grant permission to a Plant Shop Committeeman to leave his work for the purpose of attending regular or special conferences with the Labor Relations Supervisor.

The foreman will also grant permission to Chief Stewards to communicate by telephone on an unsettled grievance with the Plant Shop Committeeman assigned to their districts and also will grant permission to a Plant Shop Committeman (a) to leave his work to confer on grievances with Chief Stewards in the districts of the plant assigned to that Plant Shop Committeeman when the Plant Shop Committeeman has been requested to do so by the Chief Steward, and (b) to present grievances to the Superintendent or other management representative designated to receive them from the Plant Shop Committeeman in his district. Plant Shop Committeemen may perform their regular bargaining procedure duties during working hours without loss of time or pay.

3. The management in a plant may present to the Secretary of the Local Union as grievances any abuses of the bargaining procedure by the Union, its Chief Stewards, its Plant

Shop Committeemen, its Local Union officers, or other representatives or members of the Union. If the management is dissatisfied with the disposition of the grievance made by the Local Union, it may take the grievance up with the International Union. The Union may present to the Labor Relations Supervisor in a plant as grievances any abuses of the bargaining procedure by the management or its representatives. An appeal in accordance with the bargaining procedure may be taken by the Union if it is dissatisfied with the Labor Relations Supervisor's decision. Such grievances by either the Plant Management or the Union shall be presented in writing.

4. Plant Shop Committeemen, Chief Stewards and Local Union Officers employed in the plant are subject to the same discipline as any other regular employee in the plant for violation of shop rules.

5. Regular conferences shall take place between the Plant Shop Committee of the Union and the Labor Relations Supervisor of the plant on one day, Tuesday, of each week. An agenda of the matters to be taken up at the meeting shall be delivered to the Labor Relations Supervisor by the Plant Shop Committee on the Monday morning preceding the meeting. Members of the Plant Shop Committee of the Union shall receive pay from the Corporation at their regular hourly rates for time spent in such regular conferences. The Plant Shop Committee may meet at a place designated by the management on company property for one-half (½) hour immediately preceding a meeting with the Labor Relations Supervisor, for which meeting an agenda has

been filed with the Labor Relations Supervisor by the Plant Shop Committee.

6. Special conferences for emergency matters may be arranged between the Plant Shop Committee of the Union or the President of the Local Union and the Labor Relations Supervisor, or the Plant Manager or his designated representative. Arrangements for such special conferences shall be made in advance and an agenda of the matters to be taken up at the meeting shall be presented at the time the conference is requested. Matters taken up in special conferences shall be confined to those included in the agenda. Members of the Plant Shop Committee of the Union shall receive pay from the Corporation at their regular hourly rates for the time spent in such special conferences.

7. The management will answer in writing any grievance presented to it in writing by the Union: (a) by the foreman within three (3) working days, (b) by the superintendent within five (5) working days, (c) by the Labor Relations Supervisor within seven (7) working days, (d) by the Plant Manager or his designated representative within seven (7) working days. If the Plant Manager or his designated representative is not able to answer the grievance within the specified time he will so advise the Union.

These time limits may be extended at any time by agreement between the Corporation and the Union.

8. A grievance of any employee in connection with his working conditions or a joint grievance of any group of employees in con-

nection with their working conditions shall be presented to the management in the following manner:

A. The employee or one designated member of a group of employees may (1) take the grievance up with the foreman, or (2) deposit the grievance in the box provided for that purpose, or (3) after obtaining permission of the foreman to leave their work, take the grievance to the Chief Steward.

B. The Chief Steward then takes the matter up with the foreman or other designated representative of the management in the district.

C. If the Chief Steward and the foreman or other designated representative of management are unable to dispose of the matter, the Chief Steward then shall reduce the grievance to writing and deliver copies of the written grievance to the foreman or other designated representative of management and to the member of the Union's Plant Shop Committee to whom grievances in that district are to be referred.

D. The Plant Shop Committeeman then takes the written grievance up with the Superintendent or other designated management representative for the particular district.

E. If the Plant Shop Committeeman and the designated representative of management are unable to dispose of the matter, then the Plant Shop Committeeman refers the written grievance to the Plant Shop Committee.

F. The Plant Shop Committee then delivers a written copy of the grievance to the Labor Relations Supervisor and thereafter takes the matter up with the Labor Relations Supervisor at a scheduled meeting.

G. If the Plant Shop Committee and the Labor Relations Supervisor are unable to dispose of the matter, the Plant Shop Committee then refers the matter to the proper higher officer or officers of the Local Union who may then take the matter up with the Plant Manager or his designated representative after arranging a conference.

H. If the officers of the Local Union and the Plant Manager or his designated representative do not dispose of the matter, and the officers of the Local Union believe the matter should be carried further, they then refer the matter to the International Union. If the representatives of the International Union in their discretion decide to take the matter up with the Director of Labor Relations, they shall serve notice of such intention together with a copy of the original grievance prepared by the Chief Steward upon the officers of the Local Union, the Plant Manager or his designated representative and on the Director of Labor Relations of the Corporation.

I. The officers of the Local Union shall then prepare a written statement of all facts and circumstances surrounding the grievance, and the Plant Manager or his designated representative shall write a complete statement of the case. Copies of each of these statements shall be promptly sent to the

International Union and to the Director of Labor Relations of the Corporation.

J. The International Union representatives then take the matter up with the Director of Labor Relations of the Corporation.

9. Should the Union not agree with the disposition of the matter made by the Director of Labor Relations of the Corporation, the Union shall prepare a record which shall consist of the original written grievance prepared by the Chief Steward, the written statement prepared by the officers of the Local Union, the written statement prepared by the Plant Manager or his designated representative and such other written records as there may be in connection with the matter and forward the same to the Vice-President of the Corporation in charge of Operations, together with a notice that the decision of the Director of Labor Relations of the Corporation with respect to that grievance is not satisfactory to the Union. The matter may then be submitted to the Appeal Board for final disposition, such disposition to be made within thirty (30) days of the submission. The Appeal Board shall consist of two executives of the Corporation and two official representatives of the International Union, and an Impartial Chairman. The Union and Corporation representatives of the Appeal Board shall attempt to settle all grievances properly referred to the Board. In the event that they are unable to settle a matter, it shall be determined by decision of the Impartial Chairman and not by majority vote of the Board. The Impartial Chairman shall have the right, however, to participate in all

discussions and meetings of the Appeal Board and shall also have the duty of assisting the parties in resolving particular questions.

10. The Impartial Chairman shall have only the functions set forth herein and shall serve for one year from date of appointment provided he continues to be acceptable to both the Union and the Corporation. The fees and approved expenses of the Impartial Chairman will be paid one-half by the Corporation and one-half by the Union.

11. The power and authority of the Appeal Board shall be limited to (a) matters involving the correctness of the classification of employees, and (b) applying and interpreting the provisions of the agreement, excluding paragraph 1 of Article IV (Rates of Production). In proper cases the Appeal Board may modify penalties assessed by the management in disciplinary discharges and layoffs. The Appeal Board shall not have authority to add to or subtract from or to modify any of the terms of the agreement or to establish or change any wage or rate of pay.

Any case appealed to the Appeal Board on which it has no power to rule shall be referred back to the parties without decision.

12. In any matter involving complaint by the Union under paragraph 2 of Article IV as to any previously established work load, the Appeal Board's decision shall be based upon fair and accurate time studies.

13. Any grievance not appealed from an answer at one step of the bargaining procedure to the next step of the bargaining procedure within five (5) working days after such an-

swer shall be considered settled on the basis of the last answer and not subject to further review, except that on appeals to and from the decision of the Director of Labor Relations the time shall be thirty (30) days.

14. No claims, including claims for back wages, by an employee covered by this agreement, or by the Union, against the Corporation shall be valid for a period prior to the date the grievance was first filed in writing unless the circumstances of the case made it impossible for the employee, or for the Union as the case may be, to know that he, or the Union, had grounds for such a claim prior to that date, in which case the claim shall be limited retroactively to a period of thirty days prior to the date the claim was first filed in writing.

15. If the Corporation fails to give an employee work to which his seniority entitles him, and a written notice of his claim is filed within ten days of the time the Corporation first failed to give him such work, the Corporation will, within six months, give him extra work, (i. e., work to which no other employee is entitled or work to which a junior employee otherwise would be entitled) which he can do sufficient to reimburse him for the earnings he lost through failure to give him such work and this work will be paid for at the hourly rate the employee would have received had he worked, or, if paid for at a lower rate, the Corporation will make up the difference or so much thereof as the Appeal Board shall specify in cash. Failing to give the employee work within six (6) months, the Corporation will pay back wages.

16. The Appeal Board shall not allow back pay to any employee who shall be disciplined for violating Article I, Section 6 of the agreement, which section relates to strikes and lockouts, but if the penalty imposed by the Corporation is two weeks layoff or more, the grievance machinery must be expedited so that the Appeal Board's decision will come within two weeks of the written filing of the grievance.

17. No claim for back wages shall exceed the amount of wages the employee would otherwise have earned at his regular rate less any unemployment or other compensation he may have received from any source during his layoff. The Appeal Board shall have authority in its discretion to deduct such further amount as it may deem fair.

18. No decision of an Appeal Board or of the management in one case shall create a basis for retroactive adjustment in any other case.

19. After a case on which an Appeal Board is empowered to rule hereunder has been referred to the Appeal Board, the case may not be withdrawn by either party except by mutual consent.

20. There shall be no appeal from any Appeal Board's decision. Each such decision shall be final and binding on the Union and its members, the employee or employees involved, and the Corporation. The Union will discourage any attempt of its members, and will not encourage or cooperate with any of its members in any appeal to any Court or Labor Board from a decision of an Appeal Board.

21. Any issue involving the interpretation and/or the application of any term of this agreement may be initiated by either party directly with the other party. Upon failure of the parties to agree with respect to the correct interpretation or application of the agreement to the issue, it may then be appealed directly to the Appeal Board as provided in paragraph 9.

III

Discharge

1. It is agreed that the maintenance of discipline is essential to the satisfactory operation of the plant.

2. The plant management agrees promptly upon the discharge of an employee other than a probationary employee to notify in writing the Chief Steward or Plant Shop Committeeman in the district of the discharge. Should the discharged employee or the Union representative and the Plant Shop Committee consider the discharge to be improper, a complaint shall be presented in writing through the Shop Committee to the Labor Relations Supervisor within forty-eight (48) hours of the discharge. The management of the plant will review the discharge and give its answer within seventy-two (72) hours after receiving the complaint. The management of each plant is authorized to settle such matters. If the decision is not satisfactory to the Union, the matter shall be referred to the bargaining procedure.

IV

Rates of Production

1. The management agrees that in establishing rates of production it will make studies on the basis of fairness and equity consistent with quality of workmanship, efficiency of operations and the reasonable working capacities of normal operators.

2. If any employee or group of employees claim that the rate of production on their job is too fast and the foreman is unable to adjust the matter, the job will be examined again in the following manner:

First, there shall be an examination with a Union representative from the district in attendance and all of the facts shall be made available for the parties dealing with the grievance. Should a satisfactory agreement not result, the matter in dispute shall be referred to the bargaining procedure. The management of each plant is authorized to settle such matters.

V

Layoff, Rehiring and Transfer of Employees

1. New employees of the plant shall be considered as probationary employees for the first ninety (90) days of their employment. The ninety days' probationary period shall be accumulated within not more than one (1) year. After employees have finished the probationary period, they shall be entered on the seniority list of their department or division and shall rank for seniority from the day ninety (90)

days prior to the day they completed the probationary period. There shall be no seniority among probationary employees. The Union shall represent probationary employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment as set forth in Article I, Section 1 of this agreement, but the Union shall not represent probationary employees who have been laid off or discharged except in case the layoff or discharge is for discrimination for Union activities. When other factors enter into the discharge of a probationary employee, the Union shall not represent the probationary employee.

2. Seniority is by department or division.

3. Rank on the seniority list shall not be affected by the race, marital status, or dependents of the employee.

4. The seniority lists of the Corporation on the date of this agreement show the names of all employees of the Corporation entitled to a ranking for seniority.

5. An employee shall lose his seniority for the following reasons only:

a. He quits.

b. He is discharged and the discharge is not reversed through the bargaining procedure.

c. He is absent for five days without notifying the plant. In proper cases, exception shall be made. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

d. If he does not return to work when called. In proper cases, exceptions shall be made. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

e. When he is out of work due to layoff for a period of more than twenty-four (24) months. This provision does not apply to employees with seniority ranking prior to January 1, 1938.

6. The plant will give twenty-four (24) hours notice of layoff as hereinafter defined to employees, and to the Chief Steward in the district where the layoff is to be made.

7. The management shall keep the seniority list for each department up to date at all times, and whenever the Chief Steward shall raise a question of seniority, shall make the seniority list available for his inspection for the purpose of settling the question. The management will post in each department a corrected seniority list every ninety days.

8. Notwithstanding their position on the seniority list, Chief Stewards shall, in the event of a layoff, be continued at work as long as there is a job in their district which they are able to do and any of their respective constituents still are at work, and shall be recalled to work after the layoff as soon as there is a job in their district which they are able to do and any of their respective constituents have been recalled to work.

9. Notwithstanding their position on the seniority list, the Plant Shop Committee and the President, Vice-President, Financial Secretary,

Recording Secretary, and Treasurer of the Local Union shall in the event of a layoff and rehire be continued at work at all times when one or more departments or fractions thereof are at work, provided that they are able and do the work being done at the time.

10. The plant agrees that in employing new people in any department it will so far as reasonably practicable give work opportunity to employees who are at the time laid off and are not expected to be returned to work at their plant on the model in the following order:

1. To employees of other departments of the plant, and
2. To employees of other plants of the Corporation. Such employees under this subdivision (2) start work as new employees in the plant.

11. An employee who is transferred either by the Corporation or at his own request from one plant to another plant of the Corporation, shall retain his seniority in the plant from which he was transferred for a period of twelve (12) months from the date he last worked in the plant and shall start as a new employee in the other plant, except as provided in paragraph 12 referring to the transfer of operations or departments from one plant to another plant of the Corporation.

12. When operations or departments are transferred from one plant to another plant of the Corporation, employees engaged on such operations or employed in such departments who are out of work as a result of the trans-

fer may if they so desire be transferred to the other plant and carry their ranking for seniority to the other plant.

13. When operations or departments are discontinued, then so far as reasonably practicable, employees affected will be given other work in the plant which they can do and without change of ranking for seniority.

14. When an employee is promoted or transferred to a higher paid classification, he will be paid the working rate of the new classification for fifteen (15) days after which he will receive the top rate. If he has previously worked on and at the top rate of the classification to which he was promoted or transferred, he will be paid the top rate immediately.

15. If an employee who has worked on or at the top rate of a higher paid classification is reduced to a lower paid classification and is subsequently promoted to an intermediate classification, the work of which he can perform without a breaking-in period, he will receive the top rate for the intermediate classification.

16. When an employee who has been working in a higher paid classification is transferred to a lower paid classification in the plant, he will start at the top rate of the classification.

17. When an employee who formerly worked in one plant of the Corporation is hired in as a new employee in another plant of the Corporation, he will receive the working rate of the classification in which he is employed in

the other plant for fifteen (15) days, after which he will receive the top rate. If prior to the date of his hiring in the new plant he has worked for the Corporation on and at the top rate of the same classification upon which he is hired or on or at the top rate of a higher paid classification and can perform the work of the new classification without a breaking-in period, he receives the top rate immediately.

18. Sections 14, 15, 16 and 17 of this article apply only to hourly rate employees who are in classifications to which the ninety (90) day plan of wage advancement is applicable.

Layoff

19. When there is a decrease in force, the following procedure shall be followed:

1. Probationary employees will be laid off on a plant-wide basis in such manner and as expeditiously as is consistent with the continuous, efficient and orderly operation of the plant or departments involved, providing that the laid-off seniority employee who displaces the probationary employee is willing to accept, and has the present ability to perform the job.
2. Employees with seniority will be laid off according to seniority.

Rehiring

20. When there is an increase in force after a layoff, the following procedure shall be followed:

1. Employees with seniority shall be returned according to seniority.

2. When an employee's absence from work is due solely to disability resulting from sickness or injury and due proof of the disability is given to the plant, he will be returned to work in accordance with his seniority and these rules as nearly as may be as if he had not suffered disability, providing he passes the required physical examination. If the disposition made of any such case is not satisfactory, the matter may be referred to the bargaining procedure.

21. Promotions to higher paid jobs or better jobs with equal pay are based primarily upon merit and ability, but when all other things are equal the employee having the greatest seniority will receive the preference. Violations of other than merit and ability provisions of this section shall constitute grounds of a grievance.

22. For the purpose of this article dealing with seniority, the word "employee" means an employee who is entered on the seniority list.

23. For the purpose of this article dealing with seniority, the word "layoff" means an adjustment or a reduction in working force due to model change or a decrease in the company's business, and does not mean temporary adjustments of the working force due to emergencies, week-end operations, temporary adjustment of schedules, etc. If the temporary adjustment extends beyond seven (7) working days the Union and the Corporation will consider the advisability under the existing circumstances of adjusting the working force according to the layoff provisions in the contract.

24. The Union recognizes the need for exceptional employees. Exceptional employees are employees who have a skill needed in facilitating the start of a new model or at times working forces are reduced. Any complaint by the Union in regard to the listing of any employee on the list shall be referred to the bargaining procedure.

25. The Corporation agrees that in movements of work from one plant of the Corporation to another not covered by Section 11 or Section 12 of this agreement, the Company will discuss the movements with the International Union.

26. The re-employment rights of former employees who enter the United States Armed Services will be determined on the basis of applicable laws and regulations.

27. Veterans of World War II who were probationary employees of Chrysler Corporation at the time of their induction into the United States Armed Services who are now employed at Chrysler Corporation or who in the future meet the same conditions of reinstatement as are required of veterans who were former seniority employees, shall be extended the same reinstatement and employment benefits as are conferred upon veteran former seniority employees.

28. Veterans of World War II who were not formerly employed by Chrysler Corporation who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces

and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period, and upon completion of their probationary period shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period.

29. Veterans of World War II who were former Chrysler employees and are re-employed in accordance with the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, will be granted leaves of absence for a period not to exceed a period of time equal to their seniority in order to partake in full-time schooling offered them under the G. I. Bill of Rights.

30. If an hourly rated employee is promoted to assistant foreman, foreman or to any other supervisory or salaried position, and is thereafter transferred to an hourly rated employee, he shall accumulate seniority while working in the supervisory or salaried position and when so transferred shall commence work as an hourly rated employee with the seniority ranking he had at the time of his promotion, plus the seniority accumulated while he was working in the supervisory or salaried position.

31. Provisions pertaining to shift preference may be negotiated locally in the plants. Any such agreements must have sufficient flexibil-

ity to give full protection to efficiency of operations at all times.

VI

Leaves of Absence

1. Leaves of absence not to exceed one year may be granted employees without loss of seniority in cases which the Corporation deems proper.

2. Members of the Union elected to Local Union positions or selected by the Union to do work which takes them from their employment with the Corporation shall at the written request of the Union receive temporary leaves of absence for periods not to exceed one year, and upon their return shall be re-employed at work generally similar to that which they did last prior to the leave of absence, and with seniority accumulated throughout their leave of absence.

VII

General

1. An employee reporting for work on his foreman's or management's instructions but for whom no work at his regular job is available will be offered at least four (4) hours employment at some other work at his regular hourly rate. This provision shall not apply when the lack of work is due to a labor dispute, fire, flood or other cause beyond the control of the management.

2. Employees regularly employed on the second or third shift shall receive in addition to their regular pay for the pay period five (5)

per cent and seven and one-half (7½) per cent, respectively, additional compensation.

3. Time and one-half will be paid for time worked over eight (8) hours per day.

4. Time and one-half will be paid for time worked over forty (40) hours per week.

5. Time and one-half will be paid for Saturday work in excess of forty (40) hours per week. No employee will be laid off during the week for the purpose of avoiding overtime payment. For Saturday work following a holiday specified below in Section 7 in the same week, time and one-half will be paid.

6. Time and one-half will be paid for the sixth consecutive day worked in the regularly scheduled work week. A full day's absence due to a shortage of material will be considered as a day worked for the purpose of computing the sixth consecutive day worked except in those instances when the shortage of material is the result of a labor dispute.

7. Double time will be paid for work on Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, except as outlined in paragraph 8.

Employees will be paid eight hours pay at their regular straight time hourly rate exclusive of night shift and overtime premium for the holidays specified above in this section providing they meet all of the following eligibility rules unless otherwise provided herein:

(a) the employee has seniority as of the date of the holiday,

(b) the employee would otherwise have been

scheduled to work on such day if it had not been observed as a holiday, and

(c) the employee must have worked the last scheduled working day prior to and the next scheduled working day after such holiday within the employee's scheduled work week.

Seniority employees who have been laid off in a reduction of force or who have gone on sick leave during the work week prior to or during the week in which the holiday falls, shall receive pay for such holiday. When a holiday falls on Saturday, eligible employees shall receive holiday pay provided they have worked the last preceding scheduled work day within the week in which that holiday falls. When an eligible employee is on an approved leave of absence and returns to work following the holiday but during the week in which the holiday fell, he shall be eligible for pay for that holiday. Employees working on operations which are normally classified as seven day operations and whose work is covered by paragraph 8 of this article, shall receive holiday pay in the event the holiday falls on one of their regularly scheduled days off and they meet the other eligibility requirements of this procedure for paid holiday time; provided, however, that if such employees work on a holiday which falls on their scheduled day of work when such employees are scheduled to work on a holiday and do work, they shall not receive holiday pay under this procedure but shall be paid for time worked in accordance with said paragraph 8. Employees not working on operations which are normally classified as

seven day operations, who may be requested to and do work on any of the above holidays, shall not receive holiday pay but shall be paid in accordance with the first sentence of this section. In applying this procedure when any of the above enumerated holidays fall on Sunday and the day following is observed as a holiday by the State or Federal Government, it shall be paid as such holiday. Employees who receive holiday pay under this procedure and who work part of a shift that falls within the holiday shall receive straight time for such work on the holiday.

8. Hourly rated employees working on operations which are normally classified as seven (7) day operations will not be paid overtime for Saturday or Sunday work when the Saturday or Sunday is a working day of their scheduled week, unless such hours exceed eight (8) hours per day or shift, or forty (40) hours per week. Such employees are to receive double time for hours worked on any of the designated legal holidays other than Sunday and for hours worked on the seventh consecutive day. The seven consecutive days need not fall within the same pay period. A legal holiday on which such an employee performs no work will be considered as a day worked for the purpose of computing the sixth consecutive day worked and in such case the six consecutive days need not fall within the same pay period. In all other cases the six consecutive days must fall within the same pay period.

9. The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis,

thus eliminating any double overtime payments.

10. A bulletin board shall be placed in each district by the Corporation which may be used by the Union for posting notices of the following types:

1. Notices of recreational and social events.
2. Notices of elections.
3. Notices of results of elections.
4. Notices of meetings.

The bulletin board shall not be used by the Union for disseminating propaganda of any kind whatsoever; and among other things shall not be used by the Union for posting or distributing pamphlets or political matter of any kind whatsoever, or for advertising.

11. When on full-time three-shift per day operations the time from the beginning of the shift to the end of it does not exceed eight hours, the employees shall work 7¾ hours on each shift and shall have a lunch period of one-quarter hour and shall receive eight hours pay. It is understood that this arrangement does not apply to shifts on which the employees work eight hours and have in addition a period for lunch, or to shifts on which by reason of reduction of hours for reasons other than the lunch period, there is time for a lunch period.

12. An hourly rated employee will ring his clock card at the noon hour when he leaves the plant.

13. The Corporation will furnish to the International Union a copy of the rate classification book of the Corporation. The rate classification book is to be treated in confidence and kept at the office of the International Union.

14. The Corporation will increase the wages of the employees covered by this agreement eleven and one-half cents (11½¢) an hour effective at the start of the pay period beginning April 28, 1947, provided this agreement is ratified and the Corporation so notified by May 6, 1947.

15. During May, 1947, the Corporation will make a payment in lieu of vacation with pay for 1947 of fifty-seven dollars ($57.00) to all eligible hourly rate employees who have at least one (1) year's and less than five (5) years' seniority on May 1, 1947, and a payment of one hundred fourteen dollars ($114.00) to all eligible hourly rate employees having five (5) years' or more seniority on May 1, 1947.

The following employees will be considered eligible.

(a) Those who are on the active hourly rate payroll on May 1, 1947, unless they have since been promoted to a salaried classification.

(b) Those who have worked for the Corporation during eight (8) of the preceding twelve months.

(c) Those who, on May 1, 1947, are absent due to sickness or injury and are receiving Group Sick and Accident Insurance benefits or Workmen's Compensation benefits.

(d) Those who, on May 1, 1947, are on leave of absence for a period not to exceed ninety (90) days.

A similar payment will be made during May, 1948 unless the general wage level of the Cor-

poration is changed by negotiation prior to that time, in which case the amount of the payment will be subject to negotiation.

16. The regularly scheduled work week starts at 12:01 a. m., Monday, and ends 168 hours thereafter, except those employees on third shift operations starting Sunday night in which case their regularly scheduled work week starts with the beginning of their shift Sunday night and ends 168 hours thereafter.

VIII

Special Provisions for Skilled Workers

1. A skilled tradesman is defined as one having served a four-year apprenticeship or its equivalent in any of the popularly recognized and accepted skilled trades such as tool makers, die makers, plumbers, electricians, etc.

2. The management will endeavor to the best of its ability to equalize hours among all skilled workers in the same classification in the department. Hours taken off by employees because of illness or at their own request will be considered as hours worked in the equalization of hours.

This agreement shall continue in full force and effect until April 26, 1949, and from year to year thereafter, unless between April 1 and April 15 of any year thereafter the Corporation notifies the Union, or the Union notifies the Corporation, of its desire to terminate the agreement, and thereupon the agreement shall terminate as of April 26 of the year in which the notice is given. Between April 1 and April 15, 1949, or between April 1 and April 15 of

any year thereafter the Corporation may notify the Union, or the Union may notify the Corporation, of its desire to amend the agreement, in which event the notice shall set forth the nature of the amendments desired. If the parties are unable to agree upon the proposed amendment or amendments on or before April 26 in any such year, unless the party or parties proposing the amendment or amendments withdraws them, the contract shall expire on April 26 of that year. Any amendments which may be agreed upon shall become and be a part of the agreement without modifying or changing any of the other terms of the agreement. During the term of this agreement the rates for all existing classifications are fixed except that each party may on one occasion only, and upon written notice to the other, signify its desire to open wage rate negotiations, in which event the notice shall set forth the adjustment or adjustments desired. Notice shall be in writing and shall be sufficient if sent by mail addressed, if to the Union, to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, 4147 Cass Avenue, Detroit, Michigan, or to such other address as International Union, United Automobile, Aircraft and Agricultural Implement Workers of America shall furnish to the Corporation in writing, and if to the Corporation, addressed to Chrysler Corporation, 341 Massachusetts Avenue, Highland Park, Detroit, Michigan, Attention, Secretary, or to such other address as Chrysler Corporation

shall furnish to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, in writing.

CHRYSLER CORPORATION.

INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, affiliated
with the C. I. O.

April 26, 1947

Mr. Robert W. Conder
Director of Labor Relations
Chrysler Corporation
341 Massachusetts Avenue
Detroit 31, Michigan

Dear Mr. Conder:

Today Chrysler Corporation and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO as representative of hourly rated employees, entered into an agreement. It is understood that each party has withdrawn all rate and contract proposals and demands which are not incorporated in that agreement.

The Union agrees to submit the agreement to the union membership in the plants covered by the agreement, for ratification by them on or before Tuesday, May 6, 1947, and the International Union and its Local Unions in these plants will recommend to the membership that it be ratified.

Very truly yours,

/s/ NORMAN MATTHEWS
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO

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April 26, 1947

Mr. Robert W. Conder
Director of Labor Relations
Chrysler Corporation
341 Massachusetts Avenue
Detroit 31, Michigan

Dear Mr. Conder:

On January 26, 1946, coincident to the signing of an agreement between the Union and Chrysler Corporation, I wrote you as follows:

"Now that the Chrysler Corporation and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, have entered into an agreement, and in order to further clarify understandings reached under that agreement the International Union and Local Unions disapprove violations and abuses by union representatives of the bargaining procedure provided in the agreement of the parties.

"The International Union and Local Unions believe that abuses were due to lack of understanding and because of changing conditions during the war. We believe now that the war has ended, and we return to normal conditions, the situation should improve.

"The International Union and Local Unions believe that a large percentage of time has been spent by Union representatives on matters other than provided for in the agreement. The International Union and Local Unions will make a sincere effort to keep to the minimum of time required for bargaining under the agreement. In addi-

tion, the International Union will assign a full-time representative to see that this abuse of the bargaining procedure will discontinue.

"The International Union and Local Unions will advise its Union representatives to live up to the agreement in good faith."

You have advised me that this condition has not improved. This letter is to assure you that I will personally follow this situation and that substantial improvement will result.

Very truly yours,

/s/ NORMAN MATTHEWS
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO

April 26, 1947

International Union, UAW-CIO
4147 Cass Avenue
Detroit 1, Michigan

Dear Sirs:

It is mutually agreed that all employees transferred under the so-called war transfer clause (subsequently Article V, Section 26 of the agreement dated January 26, 1946, between the Union and the Corporation) who, by agreement, have remained at the plant to which they were transferred shall rank for seniority from the date of their latest entry into that plant. Such employees and all other employees who, subsequent to August 17, 1945, transferred to another plant of the Corporation under Article IV, Section 11 of the agreement of September 10, 1943, as amended, (subsequently Article V, Section 11 of the agreement of Jan-

uary 26, 1946), shall be credited with their uninterrupted service in both plants for the purpose of determining their eligibility for vacation payment.

Yours very truly,
CHRYSLER CORPORATION
ROBERT W. CONDER

Accepted by:

INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO
NORMAN MATTHEWS

[fols. 109-111] IN SUPREME COURT OF MICHIGAN

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., Emil Mazey, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, Norman Matthews, Arthur Grudzen, Alex Barbour, William Kuck, Ralph Filoccia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell and Blaine Marrin, Plaintiffs and Appellees,

v.

JAMES N. MCNALLY, Wayne County Prosecuting Attorney, and Eugene F. Black, Attorney General of the State of Michigan, Defendants and Appellants.

OPINION — Filed June 29, 1949

Before the entire bench.

NORTH, *J.*

Plaintiffs, commonly known and herein designated as UAW-CIO, and others, sought and obtained a decree enjoining the prosecuting attorney of Wayne County and the attorney general, who intervened as a defendant, from prosecuting criminal proceedings under Act No. 318, Pub. Acts 1947 *, which criminal prosecutions were threatened [fol. 112] under circumstances hereinafter noted. From the decree entered in the circuit court the defendants have appealed.

A dispute involving wages arose between UAW-CIO union employees and their employer, the Chrysler Corporation. Resort was had to collective bargaining. The notices required by State and Federal law regulating labor disputes were given and mediation sessions between the respective parties followed. While such sessions were pending the union officers concluded that further mediation would be of no avail and thereupon gave notice to the representatives

* Act No. 176, Pub. Acts 1939, as amended; Stat. Ann. 1947 Cum. Supp. § 17.454 (1) et seq. We are not herein concerned with the latest amendment to this statute. See Act No. 230, Pub. Acts 1949.

of the Chrysler Corporation that a strike would be called, and such strike did go into effect on the forenoon of the following day. The calling and putting into effect of this strike was obviously in violation of the terms of the statute about to be noted and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid.

Act No. 318, Pub. Acts 1947, commonly known as the Boniñe-Tripp act, provides that in the event the parties to a controversy such as here involved are not able to agree among themselves or that a solution and determination of their controversy cannot be reached by mediation or arbitration, before a strike may be called an election shall be held in accordance with the terms of the statute and the strike shall not be instituted unless "a majority of all employees in such bargaining unit * * * vote in favor of such action." Act No. 318, § 9a, Pub. Acts 1947. Section 22 of the act in part reads:

[fol. 113] "Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, * * * while mediation is pending * * *, or while an election is pending * * * shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment."

It is plaintiffs' contention that insofar as the statute makes the calling of an election and the affirmative vote of a majority of all employees in the bargaining unit involved in the labor controversy a prerequisite to calling or instituting a strike and provides a penalty for violation of the statute, it impairs the rights of plaintiffs in violation of sections 4 and 16, Article II, of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and further that the noted statutory provision is repugnant to the right of collective bargaining granted to unions under the National Labor Management Relations Act, i.e.—the Taft-Hartley Act. (61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197.) On this appeal defendants have presented two questions, as follows:

"1. Do the election requirements of Act No. 318, secs. 9, 9a, 9b, and 9c, Pub. Acts 1947, known as the Boniñe-Tripp

Act, and the penal provisions thereof, sec. 22, violate plaintiffs' and appellees' rights of freedom of speech and due process of law as guaranteed by Art. II, secs. 4 and 16 of the Constitution of Michigan, 1908, and Amendments 1 and 14, U. S. Constitution?'"

"'2. Has Congress, in the National Labor Relations Management Act (Taft Hartley Act), by its expressed intent therein, so preempted the field of regulation of labor-management relations in industries affecting Commerce that [fol. 114] any State police power regulation of such relations in industries affecting Commerce must necessarily be in conflict with such federal law and therefore null and void?'" *

In granting plaintiffs the injunctive relief prayed, the circuit judge placed decision on three grounds: That the statutory requirement of an election was (1) in violation of Article II, §§ 4 and 16 of the Michigan Constitution; (2) in violation of the Fourteenth Amendment of the Federal Constitution; and (3) as affecting interstate commerce in violation of Article I, § 8 (3) of the Federal Constitution in view of the National Labor Management Relations (Taft-Hartley) Act.

The recent decision of the United States Supreme Court in International Union, U.A.W., A.F. of L., Local 232 v. Wisconsin Employment Relations Board, —— U. S. —— (decided February 28, 1949), is informative in the field of law pertinent to the instant case. For brevity we refer to the cited case as the Wisconsin case. That suit involved the constitutionality of the Wisconsin Employment Peace Act, the pertinent portion of which we quote in the accom-

* Question number two is restated by appellees as follows:

"'2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?'"

[fol. 115] panying footnote.* At the outset of the United States Supreme Court's opinion it is stated that the validity of the Wisconsin statute "is challenged because it is said to transgress constitutional limitations imposed by the Thirteenth and Fourteenth Amendments and by the Commerce Clause as implemented by the National Labor Relations Act (49 Stat. 449) and the Labor Management Relations Act of 1947." 61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. § 141-197. Negotiations incident to a new collective bargaining contract between the employer, the Briggs & Stratton Corporation, and its employees reached a deadlock. Thereupon the union resorted to repeatedly calling union meetings during working hours and without warning the employees would leave their work and return at their pleasure. This occurred 26 times within approximately four and one half months. This procedure had the desired [fol. 116] effect of disrupting the employer's business, and as described by the union leaders was "a new technique for bringing pressure upon the employer" to obtain concessions incident to the union's demands made in the collective bargaining proceedings.

The employer instituted proceedings before the Wisconsin Employment Relations Board. After prescribed pro

* "The Wisconsin Employment Peace Act provides in part as follows:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others: (a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family. * * * (c) To co-operate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike. * * * (h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." Wis. Stat. (1947) c. 111 § 111.06.

cedure that board ordered the union to cease and desist from "engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike."

The union sought and obtained in the Wisconsin courts review of the board's order. In the particular above noted the Wisconsin Supreme Court affirmed the board's order (250 Wis. 550; 27 N.W. 2d 875); and in that respect the United States Supreme Court affirmed the holding of the Wisconsin Supreme Court. While the issue in the Wisconsin case was not identical with that in the instant case, the reasoning and holding in that case are applicable to the case at bar.

Plaintiffs' first argument in support of their contention that the statute here involved is unconstitutional is stated in their brief as follows: "To prohibit by law calling or [fol. 117] instigating a strike without distinction as to object or other circumstances is so unreasonable as to deny freedom of speech and due process of law."

As a sufficient refutation of this contention it need only be noted that the Bonine-Tripp act does not prohibit calling or instituting a strike incident to any legitimate labor controversy. Instead the act merely requires as a condition precedent to calling or instituting a strike the approval so to do expressed at an election by the vote of a majority of the employees in the bargaining unit. Quite universally there are three parties interested in and affected by a strike—the employer, the employees, and the public. Plaintiffs' statement in their brief concerning picketing is equally applicable to a strike:

"Nobody is really confused into thinking that picketing is not something more than speech or that the right to picket as supported by freedom of speech is not without limits."

In the Wisconsin case, supra, the ultimate decision was that the state might provide against undue coercion. A strike is not only a means of exercising the right of free speech, but it is likewise a medium of exercising coercion.

As such it is subject to reasonable regulation by the state in the exercise of its police power. It may well be inferred that the legislature in enacting the statutory provision under consideration was at least to some extent motivated by a desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on [fol. 118] strike. The detriment in such cases to the remaining majority of the employees, to the employer, and also generally to the public, is obvious; and the legislature might well have considered it a justifiable reason for restricting or limiting the union's right to institute a strike incident to collective bargaining proceedings as prescribed in the Bonine-Tripp act.

"Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." South Carolina Highway Department v. Barnwell Brothers, Inc. 303 U. S. 177, 191.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question." Zahn v. Board of Public Works, 274 U. S. 325.

"The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. • • •

"But the circumstances that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. • • •

"We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.'" Carpenters Union v. Ritter's Cafe, 315 U. S. 722.

We think it is not an unreasonable exercise of the state's police power to forbid resort to a strike which is not ap- [fol. 119] proved by a majority of the employees involved, and thereby protecting both the majority of the employees in the bargaining unit and the public. Nor is it a denial of free speech any more than is the limitation of certain other phases of action in labor controversies. Carpenters Union v. Ritter's Cafe, supra; Lincoln Union v. Northwestern Co., 335 U. S. 525. In disposing of a like contention in the Wisconsin case, *supra*, the court said:

"It is further contended that the statute as applied invades rights of free speech and public assemblage guaranteed by the Fourteenth Amendment. We recently considered a similar contention in connection with other state action concerning labor relations. *Lincoln Federal Labor Union et al.* v. *Northwestern Iron and Metal Co.*, and *Whitaker et al.* v. *North Carolina*, 335 U. S. 525 and *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538. For reasons there stated, these contentions are without merit."

The Wisconsin statute, which in its requirement of a majority vote of the employees of the bargaining unit is quite identical with the like provision in the Bonine-Tripp act; was held valid as against like contentions as herein presented, and re-hearing was later denied, in Hotel and Restaurant Employees' International Alliance, Local No. 122 v. Wisconsin Employment Relations Board, 236 Wis. 329; 294 N.W. 632; 295 N.W. 634. On appeal to the United States Supreme Court the decision of the Wisconsin court was affirmed. See 315 U. S. 437. In its opinion the Supreme Court of the United States said:

"The specific question for decision is the constitutional validity of an order made by the Wisconsin Employment Relations Board acting under the Employment Peace Act, Wisconsin Laws of 1939, c. 57. • • •

[fol. 120] "What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to say, so long as rights guaranteed by the Constitution are respected. *Aikens* v. *Wisconsin*, 195 U. S. 194; *Senn* v. *Tile Layers Union*, 301 U. S. 468. As the order and the appropriate provisions of the statute upon which it was based leave the peti-

tions of freedom of speech unimpaired, the judgment below must be affirmed."

It is worthy of note that the United States Supreme Court in its opinion literally quoted the provision of the Wisconsin statute which makes it " 'an unfair labor practice' " to " 'Cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike' * * *."

As pertinent to the issue in the instant case we quote the following from the opinion of the Wisconsin Supreme Court in the Hotel and Restaurant Employees' Local No. 122 case, 236 Wis. 329, 345:

"We find nothing in the act which prevents a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert. (For like provision in the Bonine-Tripp act, see § 132.) * * *

"The petitioners complain that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective-bargaining unit; that the legislature cannot place it within a power of a majority of the collective-bargaining unit to authorize a strike. This argument is an attack upon a principle which is fundamental in the attempt of the legislature and of congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective-bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective-bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective-bargain-[fol. 121] ing unit amounts to nothing, if after it is made the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act (29 USCA § 151 et seq.), in the Railway Labor Peace Act (45 USCA § 151 et seq.), and in the act now under consideration. If the majority of a collective-bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the legislature may not vest in a majority of the unit power to deter-

mine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them. * * *

"In providing for 'industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services' * * *, we see no reason why the legislature may not forbid concerted picketing and boycotting in aid of an unauthorized strike. * * * All these questions relating to rights of employees to organize, conduct strikes, boycotts, and other coercive measures are in the field of public policy. As the court of appeals of New York said in the case already cited (May's Furs & Ready-To-Wear, Inc., v. Bauer (1940), 282 N.Y. 331; 26 N.E. (2d) 279), and as this Court has said many, many times, these questions are for the legislature. Courts do not sit to pass upon the wisdom or unwisdom of the acts of the legislature. * * *

"Both parties to a labor dispute are under the same constitution and both are subject to the valid acts of the legislature. Just where the line should be drawn in an effort to balance the bargaining power of the parties is primarily a matter of public policy for the legislature and not a question of law for the courts."

While seemingly quite unnecessary, it may be noted that section 19 of the Bonine-Tripp act provides:

"This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all the provisions of this act shall be liberally construed for the accomplishment of said purposes."

In the light of the authorities hereinbefore cited we are of the opinion that, contrary to appellees' contention, the provision of the act under consideration is not "so unreasonable as to deny freedom of speech and due process of law."

[fol. 122] In so concluding we are mindful that in a case decided by the Federal district court in Kansas an opposite conclusion was reached. See Stepleton v. Mitchell, 60 Fed. Supp. 51. We also note the decision in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810; and

American Federation of Labor v. Bain, 165 Ore. 183, cited by appellees and relied upon in the opinion of the trial judge. But the statutory provision considered in the Alabama case was materially different than the Michigan statute in the following respect. The vote required to authorize a strike was "the vote of the majority of the regular employees working in the business, plant, or in such unit thereof * * *." In construing this provision, the court said:

"The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit, or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions."

In the remaining case, American Federation of Labor v. Bain, *supra*, the court held invalid the Oregon statute which prohibited picketing by a minority of the employees of a given employer. The court said: "* * * the controversy has resolved itself largely into the question whether the regulation, or, as the plaintiffs would have it, the prohibition, of picketing and boycotting in Sections 1 and 3, invades the plaintiffs' fundamental rights and liberties of freedom of speech and of assemblage." Obviously the issue in the Oregon case was quite materially different than that [fol. 123] in the instant case, and hence the holding in the Oregon case is not persuasively material to decision herein.

As earlier noted herein the remaining question as restated in appellees' brief is as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

On this issue the position of appellees is stated in their brief as follows: "The strike election provisions of the Bonine-Tripp Act conflict with the National Labor Management Relations Act."

Admittedly, as applied to interstate commerce, if the Bonine-Tripp Act does conflict with the provisions of the National Labor Management Relations Act, the former is not enforceable; but if there is no conflict the validity and enforceability of the Bonine-Tripp Act is not impaired on this ground. In appellees' brief it is pointed out that as related to collective bargaining the National Labor Management Relations Act contains specific provisions, and it is asserted "it covers the field of the strike in consequence of failure to reach an agreement." And appellees' brief continues.

"It (the Federal act) sets the following conditions precedent to striking: (1) Sixty days notice of contract termination; (2) Offer to negotiate new contract; (3) Notice to Federal and State conciliation boards of existence of a dispute; and (4) continues in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of 60 days." See National Labor Management Relations Act (1947), [illegible] S. [illegible]

[fol. 124] We do not discover in the foregoing any provisions which are inconsistent with or in conflict, either expressly or by necessary inference, with the requirement of the Bonine-Tripp act that as precedent to calling a strike there shall be a vote of the employees of the bargaining unit; nor has there otherwise been called to our attention any such inconsistent or conflicting provisions in the Bonine-Tripp act. The very fact that subdivision 3 of the above quotation requires notice to "State conciliation boards" indicates that the Federal act was not thought to be exclusive of permissible state regulations. Further, it is difficult, if not quite impossible, to read the decision in the Wisconsin case hereinbefore noted without coming to the conclusion that in the exercise of its police power a state may by legislation regulate the exercise of the right of employees to strike, providing such regulations are not in conflict with or inconsistent with Federal regulations.

As stated by Justice Brandeis in Dorchy v. Kansas, 272 U. S. 306: "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." That individual states have the right within the valid exercise of police power to regulate the calling of a strike, and that restrictions of that character do not violate the constitu-

tional liberty possessed by employees or union labor organizations has been adjudicated by highest authority. See Nebbia v. New York, 291 U. S. 502. In Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740, 749, it was said:

[fol. 125] "Furthermore, this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.' . . . We will not lightly infer that Congress by the mere passage of a Federal Act has impaired the traditional sovereignty of the several States in that regard."

That congress in passing the Labor Management Relations Act of 1947 did not intend thereby to deprive the states of any and all power to limit or qualify the right to strike, is persuasively indicated by section 13 of the Act which reads:

"Nothing in this Act, *except as specifically provided for herein*, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitations or qualifications on that right.*"

And in Kelly v. Washington, 302 U. S. 1, 10; 82 L. Ed., 3, 40, the court said:

"The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"

We conclude that in the particular under consideration the Michigan statute is not in conflict with the National Labor Management Relations (Taft-Hartley) Act.

In considering this case we have not overlooked appellees' contention that enforcement of the statutory provision herein involved could be in conflict with the commerce clause of the United States Constitution, Article I, § 8 (3). The test would be: Does this statutory provision impose an undue burden upon interstate commerce? We think it does [fol. 126] not. This issue was quite fully considered in International Union v. Wisconsin Employment Relations

Board, *supra*, and decision therein was adverse to appellees' contention herein. In reaching a like conclusion we are content to rest decision on the holding of the Wisconsin court, incident to which it was said:

"But if the contention of the respondents on the ground now under consideration is upheld, then every order of the board based on violation of unfair labor practices of employees (and we might add every pertinent act of the legislature) may be ignored and there will be nothing left that the board can effectively do, as some products of every manufacturer inevitably reach interstate commerce."

To hold otherwise than in the cited case in practical effect would be to say that in this type of cases the commerce clause of the United States Constitution largely, if not wholly, nullifies the inherent rights of states to exercise police power. We are not prepared to so hold. In this connection it may be noted that appellees call attention to the fact that some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in California. Even so, we are of the opinion that this circumstance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state. Otherwise diversity of state location of employees would limit the right of any of the states, wherein the employees were located, in the exercise of inherent police power in the particular with [fol. 127] which we are here concerned. We know of no authority sustaining such conclusion and consider it not tenable.

"Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases*, 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. * * * Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced." Kelly v. Washington, *supra*.

Incident to appellees' challenge of the validity of the statutory provision here involved, we find no merit in their contention that: "It is equally obvious that the statute is not saved by the delegation of authority to a majority of the bargaining unit. The character of the right (to strike) under discussion pertains to each individual." The right of an individual to terminate his employment is expressly preserved to the employee by the portion of section 13a of the Bonine-Tripp act, which reads:

"Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

In granting the injunctive relief prayed in the instant case the circuit judge was in error. The decree entered in the circuit court is reversed and a decree dismissing the bill of complaint may be entered in this Court. Since the constitutionality of the statute and an important question are here involved, no costs are awarded.

Signed Walter H. North, Henry M. Butzel, Leland W. Carr, John E. Dethmers, Neil E. Reid, George E. Bushnell, Edw. M. Sharpe, Emerson R. Boyles.

[File endorsement omitted.]

[fols. 128-130] In Supreme Court of Michigan

Present the Honorable Edward M. Sharpe, Chief Justice; George E. Bushnell, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, Associate Justices.

44252

International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., et al., Plaintiffs,

vs.

James N. McNally, Wayne County Prosecuting Attorney, et al., Defendants and Appellants

Decree—June 29, 1949

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the county of Wayne, in Chancery be and the same is hereby reversed, vacated and held for naught, and the bill of complaint dismissed. It is further ordered that no costs be awarded herein.

[fol. 131] In Supreme Court of Michigan

[Title omitted]

Order Allowing Appeal—September 26, 1949

The International Union of United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Knack, Ralph Filecchia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick J. Johnston, Walter Rood, William T. Archer, [fols. 132-134] Michael Lacey, Harry Southwell, and Blaine Marfin, the above-named Plaintiffs and Appellees, having prayed for an allowance of an appeal to the Supreme Court of the United States from the final judgment rendered by the Supreme Court of the State of Michigan in the above-

entitled cause on June 29, 1949 and having presented and filed their petition for appeal, assignments of error and prayer for reversal and a statement as to jurisdiction on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above-entitled cause as provided by law, from the Supreme Court of Michigan to the Supreme Court of the United States, and

It is further ordered that the Clerk of the Supreme Court of Michigan prepare and certify a transcript of the record in this cause, as may be designated by the appellants and appellees; and transmit the same to the Supreme Court of the United States so that the Clerk of said Court shall have said record within forty days from this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $250.00.

Fred M. Vinson, Chief Justice of the United States.

Dated: September 26, 1949.

[fol. 135] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—September 26, 1949

Now come the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., Emil Mazey, Norman Matthews, Arthur Grudzen, Alex Barbour, Wilson Kuck, Ralph Filecchia, Alfred S. Marcangelo, Richard T. Leonard, Leonard McPherson, Frederick J. Johnston, Walter Rood, William T. Archer, Michael Lacey, Harry Southwell, and Blaine Marrin, the above-[fol. 136] named Plaintiffs and Appellees and in connection with their appeal herein, file the following assignment of errors, upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Michigan, dated June 29, 1949. The Supreme Court of Michigan erred:

1. In holding that the provisions of Michigan Act 318, Public Acts of 1947 prohibiting the calling of a strike for

higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit have voted approval in a state conducted election, did not unconstitutionally invade the field of labor relations which Congress has occupied by the Labor Management Relations Act, 1947 (61 Stat. 136; 29 U.S.C. 141 et seq.).

2. In holding that the said strike vote provisions of the Michigan Act 318 did not conflict with the provisions of Labor Management Relations Act, 1947.

3. In holding that the provisions of the Michigan Act 318 which prohibit under criminal penalties employees and their representatives from "instigating" or "calling" or "causing" a strike for higher wages unless they first secure the approval of a majority of all workers in the bargaining unit, including those who do not vote and those not associated with them in their union, were not violative of the due process requirements of the Federal Constitution as invalid restrictions upon freedom of speech and of assembly and of collective bargaining and upon the right to quit work in concert.

[fols. 137-149] 4. In reversing the decree of the Circuit Court of Wayne County for the plaintiffs and in dismissing the Bill of Complaint.

Wherefore, plaintiffs-appellees pray that said judgment of June 29, 1949 be reversed.

Irving J. Levy, Joseph L. Rauh, Jr. Rauh and Levy, 1631 K Street, N.W., Washington 6, D. C. Harold A. Cranefield, 5707 Second Avenue, Detroit 2, Michigan. Attorneys for Plaintiffs and Appellees.

September 26, 1949.

[fol. 150] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 456

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF THE RECORD—Filed November 28, 1949

In compliance with paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States as amended, Appellants submit herewith their statement of points on which they intend to rely and their designation of the record.

1. Appellants intend to rely upon the four points set forth in their Assignment of Errors and Prayer for Reversal filed in this Court on September 26, 1949.

[fol. 151] 2. Appellants deem the following parts of the record necessary for the consideration of the points on which they intend to rely.

(a) Record on Appeal in the Supreme Court of the State of Michigan.

(b) Opinion and Judgment of the Supreme Court of the State Michigan.

(c) Order of the Supreme Court of the United States Allowing Appeal.

(d) Assignment of Errors and Prayer for Reversal.

(e) This Statement and Designation.

Irving J. Levy, Joseph L. Rauh Jr., Rauh and Levy, 1631 K Street, N. W., Washington 6, D. C., Harold A. Cranefield, 5707 Second Avenue, Detroit 2, Michigan, Attorneys for Appellants.

Certificate of Service

I hereby certify that the foregoing statement of points on which appellants intend to rely and designation of the [fol. 152] record was served this 28th day of November, 1949 upon the Honorable Edmund E. Shepherd, Attorney for Gerald K. O'Brien and Stephen J. Roth, Appellees, by mailing a copy thereof to him at his office in Lansing, Michigan, postage prepaid.

Irving J. Levy.

November 28th, 1949.

[fol. 152a] [File endorsement omitted]

[fol. 153] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949.

No. 456

ORDER NOTING PROBABLE JURISDICTION—December 12, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Douglas took no part in the consideration or decision of this question.

[Endorsed on Cover:] Enter Joseph L. Rauh, Jr. File No. 54,205. Michigan Supreme Court, Term No. 456. The International Union of United Automobile, Aircraft and Argicultural Implement Workers of America, C.I.O., et al., Appellants, vs. Gerald K. O'Brien, Wayne County Prosecuting Attorney and Stephen J. Roth, Attorney General of the State of Michigan. Filed November 15, 1949. Term No. 456 O.T. 1949.